
Post-Retirement Employment Program Report

Public Employees' Retirement System Plan 1 Teachers' Retirement System Plan 1



Prepared for:
Select Committee on Pension Policy
Senate Committee on Ways and Means
House of Representatives Committee on Appropriations

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Executive Summary



Hot topics in the world of public employee retirement systems do not generally garner much attention outside the world of actuaries, attorneys, and benefits specialists. At least one retirement issue, however, attracts the attention of employers, employees, politicians, and the media alike – post-retirement employment or the practice of “retire-rehire.”

As one of the more controversial issues for public pension systems, retire-rehire has received considerable attention in the press and Washington State is no exception. Washington’s expanded post-retirement employment opportunities were the subject of analysis in *Governing Magazine* (July 2003). They were highlighted in numerous newspaper articles and editorials, including those published by the *Olympian* (September 9, 2002, and August 1, 2004), the *Seattle Times* (January 30, 2003, and February 1, 2002), the *News Tribune* (April 21, 2003), the *Columbian* (September 26, 2002), and the *Daily* of the University of Washington (May 7, 2004). They were also the subject of a King5 Investigative Report (May 24, 2004).

Perceptions of retire-rehire vary and opinions run deep. Public sector programs involving the re-employment of retirees are more sensitive than those in the private sector because of the perceptions they generate and their potential impact on taxpayers. Proponents of post-retirement employment argue that once a retirement benefit is earned, it should not matter whether the retiree returns to work with the same employer or whether that

The following “windows” illustrate different views of workforce strategies in the public sector.

Actuarial View

- ◆ Identify costs
- ◆ Project future liabilities
- ◆ Monitor experience and assumptions

Employee View

- ◆ Increase long-term financial security
- ◆ Gain flexibility in later years of career
- ◆ Increase level of enjoyment and fulfillment

Employer View

- ◆ Retain experience base
- ◆ Address labor shortages
- ◆ Add workforce flexibility

Retirement System View

- ◆ Manage complexity
- ◆ Communicate change
- ◆ Avoid legal challenges and plan qualification issues

Political View

- ◆ Identify social and financial consequences
- ◆ Consider criticisms and perceptions
- ◆ Manage special interests while maintaining fairness

Retire-Rehire:

Under retire-rehire, retired members return to work and earn a salary while drawing a retirement pension.

retiree works while drawing a pension. Opponents believe that drawing a public pension and earning a salary at the same time is “double dipping” and not retirement. As a philosophical matter, the retire-rehire debate gets to the very purpose of retirement – that is, whether a retirement pension is to provide income security to those leaving the workforce, or whether it is a reward for completing a determined number of years in a career.

Changing workforce dynamics are altering our views of retirement, and the retire-rehire issue is one bellwether for this shift. As the workforce is aging, older workers are expressing both the need and the desire to remain in the workforce longer. Accordingly, for those age 65 and older, the percentage of income from work is increasing. At the same time, employees are showing an interest in more flexible work arrangements that will enhance their enjoyment of work in their later years. Similarly, employers are focusing on experienced workers as important resources in their workforce plans.

The retire-rehire debate raises the question of whether the retirement system should be used as a personnel tool for achieving human resource goals. Washington’s 2001 expansion of the retire-rehire program for the Teachers’ Retirement System (TRS) and the Public Employees’ Retirement System (PERS) Plans 1 was initially implemented in response to a shortage of employees with skills in high demand. It allows retirees who desire to work up to 1,500 hours in a calendar year to be re-employed after a waiting period. The retiree can receive both a pension and a salary during the period of post-retirement employment. Since the Plans 1 are service-based plans, the retire-rehire program was used to counter built-in Plan 1 incentives to retire early such as the “30 years and out” retirement eligibility and the 60 percent benefit cap.

"Changing workforce dynamics are altering our views of retirement...."

A 2005 study mandate from the Washington State Legislature directed the Office of the State Actuary (OSA) to conduct an actuarial analysis of the expanded retire-rehire program for the Plans 1 of TRS and PERS. The OSA was also asked to investigate a range of legislative alternatives to the current retire-rehire program. Those alternatives include several proposals to increase the maximum retirement allowance in the Plans 1 beyond 60 percent of final compensation, all of which have been priced; amendments to the existing program, some of which have been priced; repeal of the 2001 expansion of the existing program; a phased retirement program, and a Deferred Retirement Option Plan (DROP).

Certainly cost is a significant factor in determining the future of the current retire-rehire program in Washington State, but there are many other decisions to be made in evaluating whether to retain the current program or to develop and implement one or more alternative workforce strategies. Ultimately, any selected strategy should reflect the goals for the program. **This report does not recommend a goal or strategy.** Instead, it examines retire-rehire and its alternatives from the perspectives of employers, employees and policy makers, while analyzing the issue from administrative and actuarial perspectives. This report is intended as a tool for decision-makers as well as those who seek to influence them.

In examining retire-rehire and its alternatives, the OSA recognizes that the service-based plan design of TRS 1 and PERS 1 encourages members to retire earlier and seek additional

employment opportunities with their employers prior to leaving the workforce. Generally speaking, the legislature can respond by taking any of the following paths:

1. Do nothing, leaving retirees to fend for themselves.
2. Change the plan design to grant incentives for members to stay longer (such as removing or increasing the Plan 1 benefit cap).
3. Create additional employment opportunities and workplace flexibility such as retire-rehire, DROP or phased retirement.

The latter two paths assume that conditions warrant or require public sector opportunities for retirement system members to work longer. Taken together, the three paths represent a full spectrum of strategies that embody differing values about the role of the public employee retirement system in workplace dynamics.

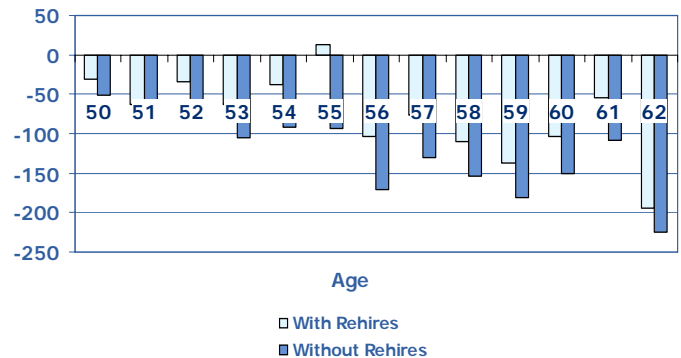
In 2001 the legislature chose the path of creating additional employment opportunities and workplace flexibility by expanding its post-retirement employment program. Whether the program has been an effective workforce strategy for meeting human resource goals is beyond the scope of analysis by the OSA. In any event, the current program is drawing attention and scrutiny in the media as cases of abuse, or perceived abuse, have made headlines over the last several years. Also, as the state budget has faced repeated shortfalls, legislators have questioned whether the program is creating unintended costs for the Plans 1 that need to be managed.

Actuarial Experience Study

In order to determine the cost of the current program, the OSA has conducted an actuarial experience study. This study looks at retirement data from the inception of the expanded program and compares (a) the actual and expected retirements of all TRS and PERS Plan 1 members with (b) the actual and expected retirements of members excluding those rehired after retirement. The hypothesis of the study is that the two groups should have the same retirement behavior if retire-rehire has no effect.

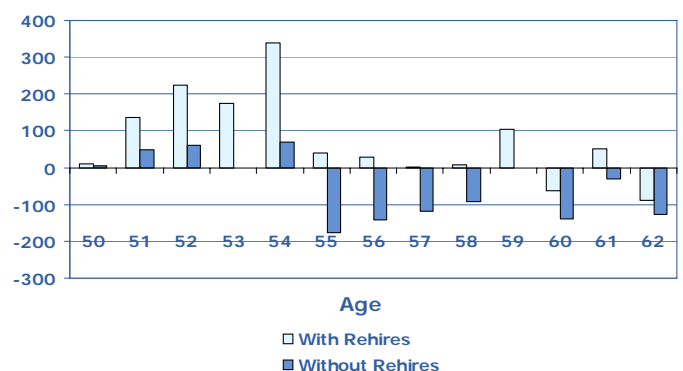
PERS Plan 1

Actual Minus Expected Retirements During Experience Study Period



TRS Plan 1

Actual Minus Expected Retirements During Experience Study Period



Actuarial Experience Study:

An actuarial experience study compares assumptions with actual statistics of events related to those assumptions. Experience may include estimates where data are incomplete or insufficient.

The charts illustrate that the difference between actual and expected retirements - with rehires and without them - is different at every age. Thus, the conclusion of the study is that the retire-rehire program has an effect on retirement behavior. The effect is that members are retiring earlier, and earlier retirement has a retirement system cost. Why is there a cost? When retirements that were assumed and funded to occur at a later date occur earlier, the attendant retirement benefits must be paid sooner than expected and over a longer period of time. Also, there is a loss of expected member contributions to the retirement system.

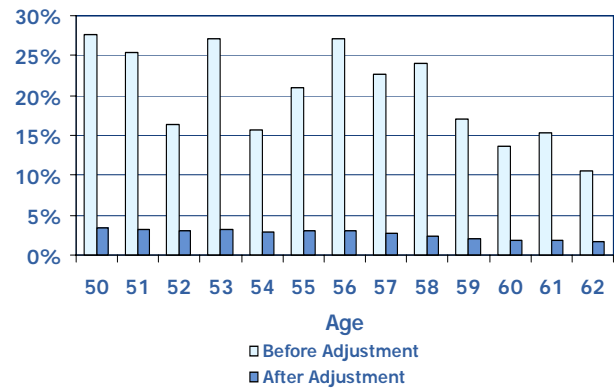
In order to determine the appropriate amount of the change in retirement experience that should be attributed to the expanded retire-rehire program and applied to future retirement expectations, the data from this study was adjusted according to actuarial standards of practice using a series of factors. These factors include adjustments for a partial experience period and a credibility weighting. The other adjustment factor is based on the portion of rehires that are working over the pre-2001 hour limits (currently 40 percent of rehires).

The following bar charts illustrate the increase in retirement rates for PERS 1 and TRS 1 due to the 2001 program changes. The increases are shown before and after applying the adjustment factors.



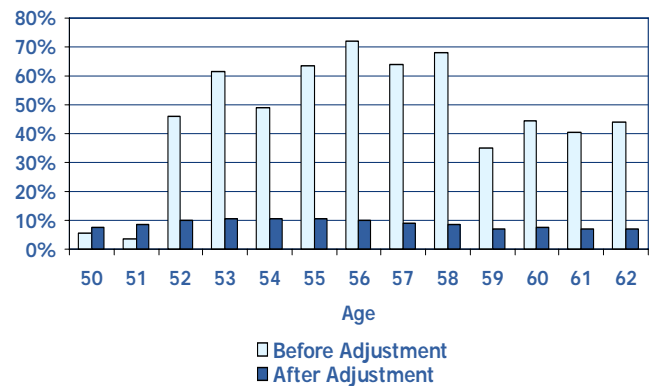
PERS Plan 1

Increase in Retirement Rates Due to Program Changes



TRS Plan 1

Increase in Retirement Rates Due to Program Changes



These charts illustrate that in the current experience study, application of the adjustment factors resulted in an assumption change about future retirement rates that was attributed to a relatively small percentage of the total experience differential found in the study. As more experience data is gathered in the future, the adjustment factor for partial experience will automatically fall away. This means that if the same experience continues into the future, the costs of the program will increase over time. (See Experience Study Methodology, page 11 [et seq.](#))

Once the change in retirement experience was identified and adjusted, retirement system costs were projected using the new assumptions about future retirement rates.

The results, based on data available since the program's inception in 2001, require a 0.06 percent increase in employer contribution rates to pay for the existing program in TRS 1 and a 0.01 percent increase in employer contribution rates for PERS 1.

Projected Long-Term Increase in Employer Contribution Rates for 2001 Expansion

Retirement Plan	Required Rate Increase
TRS 1	0.06%
PERS 1	0.01%

The projected fiscal impacts of continuing the program in its current form include a total employer cost of \$7.5 million for the 2007-2009 biennium, and a 25-year total employer cost of \$101.5 million.

Projected Fiscal Impacts of 2001 Expansion

Period	Total Employer Costs
2007-2009	\$ 7.5 million
25-year cost	\$101.5 million

If the current program continues into the future, its attendant costs will be included in the calculation of the unfunded actuarial accrued liability (UAAL) for the Plans 1, which currently stands at approximately \$4 billion. Payments for this liability are collected from employers in the form of contribution rates that are represented as a percentage of payroll. As set forth in current funding policy, the employers who participate in paying these costs are not limited to just employers of Plan 1 members; instead, the costs are spread among all PERS, TRS, School Employees' Retirement System (SERS), and Public Safety Employees' Retirement System (PSERS) employers and amortized at 2024 (the date by which virtually all Plan 1 members are expected to retire).

The special funding policy of "spreading" the Plan 1 costs was adopted in order to make payments more manageable. The effect of this funding policy is that any contribution rate increase associated with a Plan 1 benefit improvement will be much smaller than otherwise required under the standard approach used for pricing benefit increases in the other plans. In other words, a benefit improvement in the Plans 1 will appear to be much less expensive than the same benefit improvement in the Plans 2/3. Thus, awareness of the Plan 1 funding policy is an important factor in assessing the magnitude of projected costs.

Alternatives

The 2005 legislative study mandate also requested that the OSA examine **alternatives to the current retire-rehire program**. One alternative is to encourage members to work beyond normal retirement eligibility without retiring. An incentive for longer service could be created by amending the Plans 1 so that members can continue to accrue benefits by working more years. This could be accomplished by removing the current cap on Plan 1 retirement benefits or otherwise **increasing the maximum retirement allowance** that can be earned by Plan 1 members late in their career. Presumably, this change in plan design would reward members for staying in the workforce longer and thereby reduce the need to re-employ retirees.

System-wide Incentives:

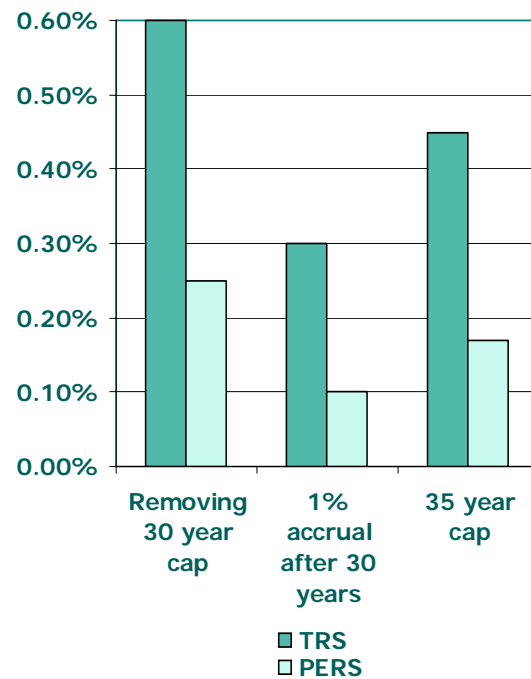
System-wide incentives give members who choose to continue to work past normal retirement age the opportunity to accrue additional benefits that will enhance their final retirement pension.

Eliminating the Plan 1 benefit cap proved to be the most expensive of all the alternatives examined in this report. For this reason, two less expensive alternatives are presented that would still offer some opportunity for members who stay in the workforce longer to accrue a better benefit. One would allow members to continue to accrue a 1 percent benefit (instead of 2 percent) after reaching 30 years of service. The other would increase the benefit cap from 30 years to 35, meaning that members could continue to accrue a 2 percent benefit until reaching 35 years of service, resulting in a maximum retirement allowance of 70 percent.

The first of the following three charts summarizes and compares the resulting increase in employer contribution rates associated with these three strategies for increasing the maximum retirement allowance. Contribution rates are expressed as a percentage of pay for TRS and PERS 1, respectively. The contribution rate chart is followed by two additional charts that summarize the fiscal impacts of these strategies for the 2007-2009 biennium and over 25 years. All three charts assume that the current program is replaced and each chart already accounts for the savings that would result from replacing the current program.

Change in Employer Contributions Rates

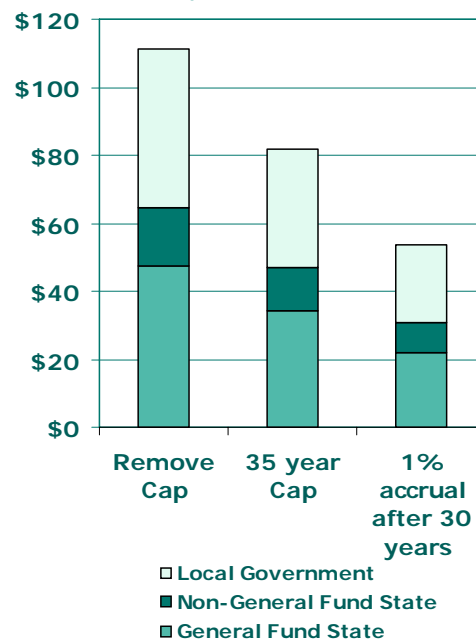
(After recognizing cost of current program)



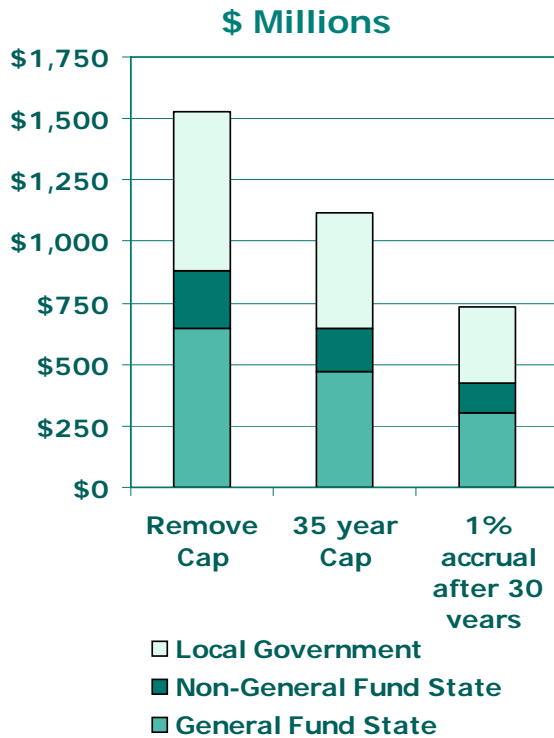
2007-2009 Fiscal Costs, PERS & TRS

(After recognizing cost of current program)

\$ Millions



25 Year Fiscal Costs, PERS & TRS (After recognizing cost of current program)



Any of these strategies to increase the maximum retirement allowance will be expensive in relation to other alternatives because they are system-wide changes that can apply to any active member. From a member perspective, the approach is consistent in its application and provides a desirable benefit to participants. From an employer perspective, legal impediments are few but cost is significant. As a workforce strategy, this approach is more appropriate for targeting an age cohort than a specific job sector. In any event, this approach raises the issue of whether it is appropriate to change the design and benefit structure of a closed plan whose members will all be retired in a matter of two decades.

"The OSA priced two proposals for amending the current program, both of which would decrease the current program's costs."

Another alternative for the legislature to consider is to keep the existing program but amend it. In fact, many legislative amendments have been proposed since the current program's inception in 2001. They include the following: reduce or eliminate the costs; create more parity between PERS 1 and TRS 1; avoid "insider agreements" to rehire particular individuals; and limit the applicability of the program. In contrast, two proposals would have expanded the program by increasing or eliminating the cumulative lifetime limits.

The OSA has priced two proposals for amending the current program, both of which would decrease the current program's costs. The elements in the first proposal are contained in SHB 1326/SB 5244 (2005), a copy of which is provided in the appendix. This bill, a slightly amended version of the Select Committee on Pension Policy's 2004 interim proposal (SCPP proposal), would bring parity to the Plans 1 by establishing additional controls in TRS 1 similar to those in PERS 1. It also would increase the cumulative lifetime limit in PERS 1 from 1,900 to 3,165 (hours worked over 867) and would create a new cumulative lifetime limit of 1,900 working hours for TRS 1. (Note: The original SCPP version proposed a cumulative lifetime limit of 3,165 hours for both plans.)

The second proposal for amending the current program that was priced by the OSA would apply the SCPP program changes, but would also reduce the retirement benefit paid to retirees while working by 50 percent. This proposal was not introduced as legislation during the 2005 session, but it could be considered as a compromise between retaining an amended program and repealing it altogether.

From a member perspective, amending the program to create parity would bring more consistency to the program. From an employer perspective, it would reduce costs

somewhat by applying more restrictions to the TRS 1 program participants than currently exist. As a workforce strategy, the program could be rendered less effective if, for example, teacher shortages persist and the ability to address them is reduced. In any event, perceptions of the program could be improved by amendments that achieve more parity and establish controls to avoid potential abuse.



Repealing the 2001 program expansion would, as a fiscal matter, result in retirement system savings that are at least equivalent to the costs identified by this report as being attributable to the program. The major area of concern in deciding whether to repeal the current program is the legal issue of vested or contractual rights. The legislation that created the 2001 program expansion included a “no contractual rights clause.” The ability of the legislature to restrict employee reliance upon a statutory expansion of benefits by utilizing a “no contractual right clause” has not yet been tested in the Washington courts.

From a member perspective, **repealing** the current program would be a reduction in benefits. From an employer perspective, there could be cost savings but less flexibility for hiring experienced employees. As a workforce strategy, repeal could be appropriate if there is no longer a need for the program; but if the program is still needed to address labor shortages, then keeping the program or replacing it with an alternate strategy may be necessary. In any event, the cloud of legal uncertainty makes costs associated with the repeal option uncertain. Under a worst case scenario, a repeal and replacement of the current program could result in employers picking up litigation costs, the costs of all or part of the repealed program, and the costs of any replacement program.

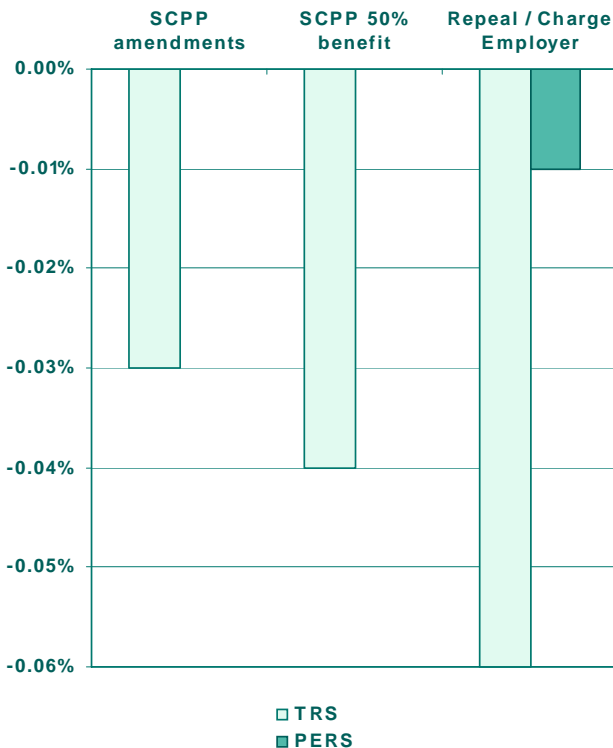
The first of the following three charts illustrates the changes in employer contribution rates that would result from (a) amending the program and (b) amending it with a 50 percent benefit reduction. Contribution rates are expressed as a percentage of pay. For comparison purposes, these two options are presented along with the option of either repealing the program altogether or charging employers the full cost of the program. This third option, (i.e. repeal or charge employers), is the option that would eliminate the cost of the current program altogether- either because the program no

longer exists or because the program is fully funded by employers who utilize the program through increased contribution rates. All three options show a savings because they are evaluated in light of the cost of the existing program.

Two additional charts illustrate the fiscal impacts of amending the program as outlined in SHB 1326/SB 5244 (2005), and amending it with a 50 percent benefit reduction. Again, these two options are presented along with the option of either repealing the program altogether, or charging employers the full cost of the program (i.e. no cost option). All three options show a savings because they were evaluated in light of the cost of the current program.

Change in Employer Contribution Rates

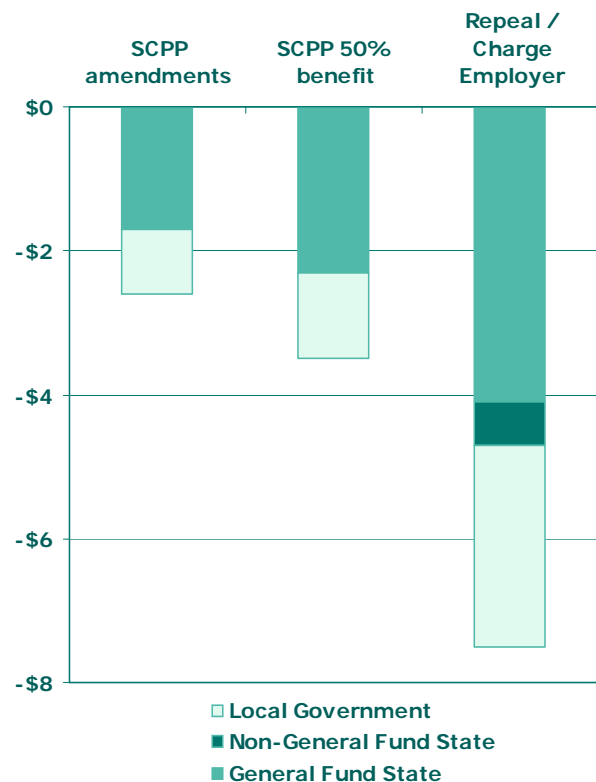
(After recognizing cost of current program)



2007-2009 Fiscal Costs, PERS & TRS

(After recognizing cost of current program)

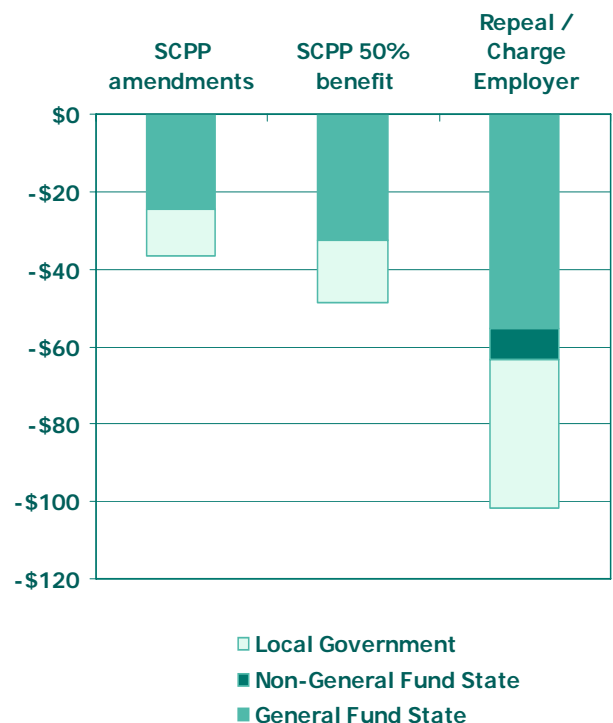
\$ Millions



25 Year Fiscal Costs, PERS & TRS

(After recognizing cost of current program)

\$ Millions



Phased Retirement:

Phased retirement allows members to receive part of a retirement benefit and work part-time, while continuing to earn part of a benefit.

Other Workforce Strategies

Should the legislature seek to explore other workforce strategies, it may also wish to consider the possibility of a **phased retirement program**. Phased retirement could replace or complement retire-rehire. It could allow members to transition into retirement by working part-time and receiving a partial benefit. Such members would have dual status: partially retired and partially in service.

The IRS has proposed rules to allow for phased retirement programs, but the rules are not yet final. Any legislation authorizing such a program for the Plans 1 would be premature until that time. Also, implementation of a phased retirement program would require significant planning in terms of IRS compliance testing, new programming, and integration with other benefits and programs.

From a member perspective, phased retirement could provide the kind of late-career flexibility that would allow or encourage members to work longer. From an employer perspective, it may allow for the retention of experienced staff. As a workforce strategy, it can be used to target specific sectors or can be used on a system-wide basis. The program can be designed as a benefit that allows employees to transition out of the workforce earlier, or costs can be controlled by structuring the program to avoid early retirements.

A Deferred Retirement Option Plan (DROP) is another workforce strategy for end-of-career employees. It may be designed to manage critical sector shortages by encouraging employees to stay longer or it may be structured as an incentive to retire early. DROPs may be designed to have a cost or to be cost-neutral.

In a standard DROP, a member who is eligible for retirement makes an election to enter the DROP for a set period. During that period, the employee becomes a retiree for pension purposes while still working for the employer and drawing a salary. No service credit is earned during the DROP period. However, the member's retirement benefit is paid into a special account where it can accumulate and earn interest or be invested by the member. At the end of the DROP period, the retirement benefit is paid directly to the member and the balance in the DROP account can be distributed or rolled over according to plan rules.

The biggest risk with a DROP program is that it is impossible to predict who will opt for DROP and who will stay with the traditional pension plan. This can cause unintended consequences. If more employees opt to participate in DROP than expected, DROPs can even cause staffing crunches. Similarly, DROPs may create funding problems if there is a significant unexpected increase in early retirements. Still, if carefully designed, DROPs can be a useful workforce strategy.

DROP - Deferred Retirement Option Program:

In a DROP, members "retire" and direct their retirement pension into a special account while continuing to work for the same employer. At the conclusion of the DROP period, they have access to the accumulated benefits in the account. Members do not accrue new service credit during the DROP period.

To summarize, the legislature faces an array of choices with respect to the current retire-rehire program for the Plans 1. It will be necessary to specifically define the policy goals for any program changes in order to effectively implement one or more of the strategies described in this report. In

deciding whether to incur a cost in connection with any Plan 1 benefit enhancements, policy makers will need to balance the need for long-term benefit security in the Plans 1 against the more immediate human resource needs that may be emerging in the public workforce.

Applying “Views” of Post-Retirement Employment to the Alternatives

	Actuarial View	Employee View	Employer View	Retirement System View	Political View
Retire-Rehire (Current)	Costs are determined over time.	Job may not be available.	Can address workforce shortages.	In place.	Controversial; popular with certain stakeholders.
Increase Maximum Allowance	Most costly.	System-wide benefit.	Provides incentives to work longer.	Requires program changes and member communication.	More consistent. More costly.
Amend Current Program	Cost varies.	More parity; more restrictions possible.	Could interfere with employer goals.	Litigation likely with certain amendments.	Litigation likely with certain amendments.
Repeal Current Program	Saves benefit costs.	Takes something away.	Could magnify shortages/lead to hiring crunch.	Litigation likely.	Litigation likely.
Phased Retirement	Targets costs.	Provides flexibility.	Facilitates retention of older workers.	Very complex; breaks new ground.	Responds to workforce trends and older employees; IRS regs. not final; timing uncertain.
DROP	Targets costs; some risk.	Provides flexibility.	Facilitates retention or replacement of older workers.	Very complex; some risks of unintended consequences.	Possible criticism for effects on highly paid employees; some risk of unintended consequences.



Introduction to the Comprehensive Report

This report is divided into several sections. The first section provides the **background** information that is necessary for understanding post-retirement employment in the State of Washington. The second section presents an **actuarial analysis** of the current retire-rehire program in the Plans 1 of the Teachers' Retirement System (TRS) and the Public Employees' Retirement System (PERS), including a description of the TRS 1 and PERS 1 experience studies conducted by the Office of the State Actuary (OSA) and the conclusions regarding the fiscal impacts of the program since its expansion in 2001. Next, the report examines various **alternatives to the existing program**. Where possible, the fiscal impacts of these alternatives are provided. Finally, the report contains a discussion of the **changing workforce** in order to provide a context for evaluating not only the existing program, but also any alternatives or plan design changes that might be considered for adoption by the Legislature. The report's conclusion is followed by **appendices** containing copies of documents that are referenced in the report as well as **demographic information** about those participating in the current retire-rehire program.

This report is intended as a reference tool for a varied audience. The table of contents will facilitate its use as a resource. This report is a companion to the 2003 Post-Retirement Employment Report by the OSA. The 2003 report is available on the OSA website at:
http://osa.leg.wa.gov/Pension_Studies.htm.

*"This report is intended as a tool for
decision makers...."*

Retire-rehire:

Retired members return to work and earn a salary while drawing a retirement pension.





Background and History

Overview

Post-retirement employment is one of the most controversial issues that public pension policy-makers face. The controversy arises when the retired employee is allowed to draw a retirement benefit while earning a salary and, in some instances, while accruing another benefit. There are at least two philosophies of post-retirement employment:

- 1) "They earned it and the benefit is paid for, so why not?"
- 2) "If it's not restricted, it leads to double dipping and abuse."

Proponents of the first view tend to favor a **service-based retirement plan**. Service-based retirement is not tied to age but to the number of years served. The philosophy is that once a public employee has reached a certain number of years of service, that employee should be able to retire regardless of age. These plans may be funded based on the assumption that members will retire when they first become eligible, which may result in higher contribution rates. Average retirement ages for these kinds of plans will be slightly younger than for aged-based plans. Allowing retirees to return to work without suspension of the pension benefit may not be considered objectionable because there is confidence that the retiree's pension is already paid for.

Proponents of the second view tend to favor **age-based plans**. They prefer to avoid situations that involve the re-employment of public employees who have already retired and often seek to retain workers in the system until they reach what is deemed to be an appropriate, normal retirement age. Age-based plans tend to provide mechanisms for members to continue to accrue benefits for working more years and working later in life. Such plans



Study Mandate

This study was conducted by the OSA in response to the legislative mandate in Chapter 518, Laws of 2005. In ESSB 6090 (2005 operating budget bill), the Washington State Legislature directed the State Actuary to conduct an actuarial analysis of the fiscal impact of the retire-rehire program for PERS and TRS Plans 1 as enacted by Chapter 10, Laws of 2001 (2001 law) and Chapter 412, Laws of 2003, (2003 law). In addition, the State Actuary was directed to present a range of legislative alternatives to the Plan 1 retire-rehire program, including an actuarial analysis of the fiscal impact of proposals to increase the maximum retirement allowance beyond 60 percent of average final compensation. As required in the study mandate, this analysis is submitted to the Select Committee on Pension Policy (SCPP), Senate Committee on Ways and Means, and the House of Representatives Committee on Appropriations. A copy of the study mandate is included in the Appendices.

may even discourage or penalize those who seek early retirement. Proponents of the second view may seek to forbid post-retirement employment altogether unless the retirement benefit is suspended. Under the second view, if post-retirement employment is allowed, it may be restricted to part-time by imposing hour limits or earnings tests that trigger suspension of the retirement benefit.

The distinctions between service-based and age-based plans point to philosophical differences about the nature of retirement. Is retirement simply the completion of a career, no matter what the person's age? Or is retirement an exit from the workforce? Is the retirement pension a reward for a set number of service years or does it involve a program to provide income for those who no longer have one?

Plan Design in PERS and TRS

Plan design reflects views and values about the nature of retirement. There are significant differences in plan design between the Plans 1 of PERS and TRS and the Plans 2/3 of those systems. As previously noted, the retirement provisions for the Plans 1 are service-based, while the retirement provisions for the Plans 2/3 are age-based.

Plan 1 retirees have a benefit formula that restricts benefit accruals after 30 years. Eligible Plan 1 retirees receive 2 percent of average final compensation (AFC) for each year of service credit to a maximum of 60 percent of AFC. There is less incentive for Plan 1 members to continue to work once they have reached thirty years of service. Furthermore, there are no early retirement provisions in TRS and PERS Plans 1, nor are there any reductions for retiring at earlier

ages. Members are eligible for normal retirement at age 60 with five years of service, age 55 with 25 years of service, or at any age with 30 years of service. The plan design does not focus on or encourage working until age 65 and beyond.

Because retirement in the Plans 1 is service-based, members tend to retire at earlier ages. Those who retire at earlier ages are more likely to seek opportunities to return to work. If they have already retired, they will prefer plan provisions that allow working after retirement, such as the post-retirement employment provisions that have been implemented for the Plans 1.

In contrast to the Plans 1, the Plans 2 impose no cap on service years. Members receive 2 percent of AFC for each year of service for as long as they continue to work. Thus a member who continues to work after qualifying for normal retirement will continue to accrue a significant increase in the monthly retirement benefit for working past age 65. In the Plans 2, members are eligible for normal retirement at age 65 with five years of service. The Plans 2 have provisions for early retirement, but the benefits are significantly reduced when members retire early. In summary, Plan 2 members are rewarded for working past age 65 by accruing additional benefits, while their benefits will be significantly reduced for retiring early. Plan provisions are aimed more at retaining older workers so they will retire later.

Similarly, in the defined benefit component of the Plans 3 there is no cap on the average final compensation. Eligible retirees receive 1 percent of AFC for each year of service, regardless of how long they work. Normal retirement is at age 65 with ten years of service, and benefits are significantly reduced for retiring early. (The vesting period is five years for those who complete 12 service credit months after attaining age 54. With respect to the defined contribution component, there

"Because retirement in the Plans 1 is service-based, members tend to retire at earlier ages."

is immediate vesting.) Generally, under the Plans 3, members will accrue greater benefits by working until age 65 or longer.

Current Post-Retirement Employment Program in Washington State

The PERS and TRS Plans 1 allow post-retirement employment within the same retirement system, but retired members are subject to waiting periods. Like other members of PERS and TRS, Plan 1 retirees must wait at least thirty days before returning to work. If retirees return to work prior to completion of the waiting period, their benefits are effectively suspended due to mandatory reductions in the benefit amounts (5.5 percent for every eight hours worked during that month to a maximum of 160 hours in PERS, and 5.5 percent for every seven hours worked during the month to a maximum of 140 hours in TRS).

The PERS and TRS Plans 1 also limit the number of hours that retirees may work after returning to employment. For the Plans 1, retirees may work up to 1,500 hours without suspension of their pension benefits. The hour limits start over with each new calendar year in PERS and with each new fiscal year in TRS.

PERS 1 retirees are subject to more specific rules affecting waiting periods and hour limits. PERS 1 retirees seeking to return to work for more than 867 hours and up to 1,500 hours are subject to a 90-day waiting period. Also these members are subject to a 1,900-hour cumulative or lifetime limit on the number of hours that may be worked beyond 867 annually. Once the 1,900 hour limit is reached, PERS 1 retirees may work up to 867 hours in subsequent calendar years before their benefits are suspended.

PERS 1 retirees are also subject to a more rigorous definition of separation from service such that any written or verbal agreement to return to work with the same employer

nullifies the separation and creates a potential violation of the statute entitled "Penalties for False Statements," RCW 41.40.55. Further, employers of these retirees are subject to certain record-keeping requirements when they hire these retirees to work for 1,500 hours, including documentation of the need to hire the retirees and records of the actual hiring process.

History of Retire-Rehire Legislation in the Plans 1

The door to post-retirement employment was first opened in the mid-1960s. Since then, there have been numerous changes to the pertinent plan provisions, most of which involved the length of the waiting period and the limits on the number of hours that may be worked before retirement benefits are suspended. A complete history is found in the December 2003 Post-Retirement Employment Report to the SCPP, available on the OSA website.

In 2001, Washington State pension law was changed to expand post-retirement employment opportunities for members of TRS 1 and PERS 1. The hour limits for these plans were increased to 1,500. The earlier limits had been five months for PERS 1; in TRS 1 the limits had been 525 hours for substitute teachers, 630 for substitute administrators and 840 for substitute teachers or principals in school districts with documented labor shortages. The new limits under the 2001 law translated to nine months in PERS 1 and a complete school year for TRS 1.

The 2001 law called for the Office of the State Actuary to study the fiscal and policy impacts of the expanded post-retirement employment program. If the State Actuary determined that the expansion resulted in increased costs for the state retirement funds, the Joint Committee on Pension Policy (JCPP) was to propose a process to charge the employers for the costs incurred. The OSA's 2003 report

concluded that there was an insufficient amount of experience data to determine a cost for the retire-rehire program at that time. The Select Committee on Pension Policy (SCPP) heard the State Actuary's report, and at its meeting on December 16, 2003, the SCPP decided to defer any recommendation for a process to charge employers until further data and study were available.

Further legislative changes involving post-retirement employment occurred in 2003. These changes only affected PERS 1 members seeking to work up to the new limit of 1,500 hours. 2003 restrictions to the existing program included the 90-day waiting period referenced above, the 1,900-hour cumulative lifetime limit on the number of hours worked over 867 annually, the prohibition on verbal and written agreements to rehire a retiree, and increased employer requirements for documenting the need for the program as well as the hiring process used to fill that need. Similar changes had been proposed for TRS 1, but were vetoed. The 2003 veto message for SHB 1829 is attached as an appendix.

During the 2004 legislative session a non-SCPP bill was introduced as HB 2640. It would have brought parity to the Plans 1 by incorporating the 2003 PERS 1 changes into TRS 1. In addition, this bill would have required employers of retired TRS 1 employees who work more than 867 hours in a school year to pay both the employer contributions as if the member were active, and an additional amount of employer contributions equivalent to the TRS 1 employee contributions that the employee would have made if active. This bill did not receive a hearing in House Appropriations.

SB 6375 was also introduced in 2004. In addition to increasing parity between PERS 1 and TRS 1, it would have established a cumulative lifetime limit of 3,165 hours for TRS 1 teachers and administrators. This bill also introduced a new element with regard to

the availability of positions open to retirees. In TRS 1, employers would be required to reopen the position and accept applications six months after hiring a retiree; in PERS 1 the same requirement would apply eight months after hiring a retiree. This bill did not receive a hearing in Senate Ways and Means.

In the 2004 interim, the SCPP studied post-retirement employment and proposed legislation in 2005. The SCPP bill, if passed, would have brought parity to the Plans 1 by establishing additional controls in TRS 1. In addition, it would have specified cumulative lifetime limits of 3,165 hours (worked over the pre-2001 hour limits) for both plans. (The current cumulative lifetime limits are none in TRS and 1,900 hours in PERS.) A House substitute bill would have set the cumulative lifetime limits at 3,165 for PERS (up from 1,900) and 1,900 for TRS (from none). SHB 1326 passed the House but did not receive a hearing in Ways and Means.

There was increased legislative activity surrounding post-retirement employment in 2005, although the only legislation that passed was the study mandate to which this report responds. In addition to the SCPP proposal, there were a number of non-SCPP proposals that were introduced as bills. An examination of the non-SCPP bills that were introduced in 2005 sheds some light on the range of issues and concerns that have arisen in connection with the existing program. The following proposals were included:

- ◆ Restrict the program to a legislative list of positions;
- ◆ Advertise the positions publicly to avoid "insider" agreements to rehire particular individuals;
- ◆ Eliminate the program altogether;
- ◆ Change policy and plan design to encourage older workers to stay in the Plans 1 longer by increasing the

maximum retirement allowance from 60 percent to 70 percent of AFC; and

- ◆ Limit post-retirement employment to 867 hours.

At the end of the 2005 session, the operating budget bill included a directive to the OSA to study the retire-rehire program. The purpose of the study is to examine the fiscal impacts of the 2001 and 2003 legislation and present a range of legislative alternatives to the current program.

Comparison with Other Retirement Systems

The following table contains a general description of post-retirement employment restrictions in other comparative retirement systems. Compared to the provisions in other states, Washington's post-retirement employment rules are not atypical.

Within this comparison, some states allow retired members to return to work up to a maximum number of hours without having their pension suspended; others allow a member to earn a maximum dollar amount. Some allow members to return to work full time upon suspension of the retirement benefit, and contributions to the retirement system are required during the period of post-retirement employment. Some states have eliminated restrictions for older retirees. Most states have more liberal post-retirement employment provisions for teachers than for other public employees. In fact, according to National Council on Teacher Retirement, all 50 states allow some form of post-retirement employment for teachers.

Rehire Provisions from Select Comparison Systems	
State / System	Post-Retirement Employment Restrictions
CalPERS	May work 960 hours
CalSTRS	May earn a maximum of \$27,940
Colorado PERA	May work 110 days if working more than 4 hours/day or 720 hours if working less than 4 hours/day
Florida (FRS)	No limits after 12 months; may work 780 hours in some positions in months 2-12
Idaho PERSI	May work less than 20 hours/week or 5 consecutive months, or less than one-half contract for teachers
Iowa PERS	Ages 55-65 may earn greater of \$30,000 or current SS limit; no earnings limit after age 65
Minnesota SRS	Under 65 may earn up to \$12,000 as indexed by SSA; suspended amounts are paid in lump sum and earn 6%; no limit after 65
Missouri (MOSERS)	May earn additional service credit but pension is suspended
Ohio PERS	Retiree contributes to a money purchase annuity plan
Ohio STERS	Retiree becomes a contributing member and may receive contributions as a lump sum or an annuity
Oregon	New tier retirees have benefit suspended and recalculated after re-retirement; Chapter 238 retirees may work 1,039 hours
Seattle	May work 1,040 hours

Legal/Technical Issues Arising in Connection with Post-Retirement Employment

Policy makers who adopt post-retirement employment provisions for their plans that allow re-employed retirees to draw their retirement allowances while earning a salary and/or accruing additional benefits are faced with certain legal issues that arise in connection with the practice. They may also be challenged with public relations issues if there is any perception of potential or actual abuse.

Prohibition Against In-Service Distributions

A tax issue may arise in the context of retirees who return to work, especially those who return to the same position or to the same employer. Federal tax law prohibits qualified plans from distributing retirement income to members who are still in service. This rule is known as “prohibition against in-service distributions” and is the genesis of the requirement that each employee have a bona fide termination of employment and actually retire prior to receiving a pension. Violating the rule can cause a retirement plan to lose its qualified status under Section 401(a) of the Internal Revenue Code, resulting in significant tax liabilities for employers and employees.

The resolution of whether there is a true separation from service is to be based upon all the facts and circumstances in each individual case. There is no IRS guidance on what constitutes a sufficient “waiting period” between retirement and post-retirement employment. This is because the waiting period is only one of many facts relevant to the issue of whether the recipient of the retirement allowance has actually retired.

An employer and employee may violate the federal rule even when a statutory waiting period has been observed. For example, the employee may leave employment pursuant to a preexisting agreement that the employer

will hire the employee back shortly after expiration of the waiting period. In such an instance, the rule would be violated because there is no bona fide termination. While a statutory waiting period can eliminate some compliance problems, it is not determinative of whether there has been a bona fide separation from service.

In the PERS and TRS Plans 1, 75 percent of those retirees who retired between July 2001 and March 2005 and were rehired returned to work with the same employer. (Note: For TRS an entire school district is considered a single employer). This raises a question as to whether the federal rule is being violated within the Plans 1. In Washington, only PERS 1 members are subject to a potential penalty for having a written or oral agreement that would negate a bona fide separation from service. Such an agreement could theoretically be prosecuted as a gross misdemeanor. As of the writing of this report, there does not appear to be any record of a successful prosecution under this provision.

Another approach to enforcing the bona fide separation from employment requirement is to establish the criteria under which a bona fide separation from service is satisfied. If there is a failure to satisfy the criteria, the retired member is required to reimburse the retirement system for any retirement allowance received during the period of violation; pay the contributions that would have been required for the period, plus interest; and contribute toward reimbursement of the retirement system for administrative expenses incurred in responding to the violation, to the extent the member is determined to be at fault. Violations could be handled as administrative, not criminal matters.

Many states have adopted a waiting period for post-retirement employment in order to minimize the possibility of making in-service distributions. Ohio has a two-month waiting

period, California has a 60-day waiting period, Colorado has a one-month waiting period, and Minnesota's waiting period is 14 days. Not all retirement systems adopt a specific waiting period.

In May of 2005 the American Bar Association's Joint Committee on Employee Benefits met with IRS and Treasury officials to pose questions and receive "unofficial, individual views" of governmental panel participants. As reported by Ice Miller Legal and Business Advisors in August 2005, the panel was asked what constitutes a bona fide severance from employment in the case of a plan participant who separates from service, and after some period of time, performs services for the employer as a leased employee? The response was that the IRS was not willing to unequivocally bless a 30-day rule, since they did not believe this situation should have a bright line rule. The IRS generally expressed skepticism regarding rehires of retired employees after a short period of time, but did not opine on what periods would be considered too short.

Inconsistencies in Statutory Framework

A technicality that creates inconsistencies in post-retirement employment practices has to do with membership eligibility. Generally, a retiree who becomes re-employed in an "eligible position" becomes subject to the post-retirement employment restrictions of that retirement system. Membership eligibility is a threshold determination, and in most cases, determining eligibility in the various retirement systems is a straightforward matter. When a person is working in a position that is membership-eligible, the person is reported by the employer to the Department of Retirement Systems. Pension benefits will be suspended when a retiree who is re-employed in an eligible position reaches the applicable hour limits. Benefits will not be suspended when a retiree works in an ineligible position or a retirement plan that is

not administered by the Department of Retirement Systems.

Retirees may work as many hours as they want in this latter category without affecting their retirement allowances. For example, the **higher education institutions** are authorized by RCW 28B.10.400 to make separate retirement income plans available to their professional and academic employees instead of PERS or TRS. These institutions determine who is eligible to participate in their higher education retirement plans. An example is found in WAC 415-108-710, which provides that a PERS retiree may work after retirement and continue to receive a retirement allowance if the member becomes an active member of a higher education retirement plan and is employed no sooner than one calendar month after the member's retirement benefit accrues.

The return-to-work legislation that was passed in 2001 did not create the ability for higher education employees to return to work without suspension of their retirement benefits. Instead, that ability is the result of the long-standing provisions in state law allowing higher education institutions to sponsor their own retirement plans and to promulgate their own rules determining who is eligible to participate in the plans. It is the statutory flexibility given to higher education plans that enables these re-employed retirees to begin accruing benefits in the higher education retirement plan while still receiving their PERS or TRS pensions.

The operation of the estoppel statute further highlights the inconsistency with respect to post-retirement employment. **Estoppel** is an archaic term that simply means stopped, blocked, or not allowed. It is derived from a doctrine of law that prevents a party from taking a certain action because it is not fair or just. Washington's retirement law includes a general estoppel rule related to post-retirement employment that was passed in 1976.

RCW 41.04.270 prohibits any member or former member from becoming a member or establishing any contractual rights in another public retirement system listed in RCW 41.50.030 (DRS-administered plans) or first class city systems if:

- ◆ The member is retired or eligible to retire (under normal, early and alternate early retirement provisions) from a public retirement system; or
- ◆ The member receives a disability allowance from a public retirement system.

The estoppel rule also provides that persons receiving a benefit or who are eligible to receive a benefit are not subject to the provisions of the statute if the person accumulated less than 15 years of service.

An exception to the estoppel rule was created in Chapter 372, Laws of 2005 for those receiving a LEOFF 2 retirement allowance. This exception would allow those who continue in public employment following retirement from LEOFF 2 to establish membership in any of the state retirement systems administered by the Department of Retirement Systems. LEOFF 2 retirees are still subject to benefit suspension under RCW 41.26.500 when they become employed in an eligible position.

The higher education plans are not covered by this estoppel rule. The estoppel rule is found in the General Provisions of Chapter 41.04, RCW and is not applicable to the higher education plans, which are authorized in Chapter 28B.10, RCW. By its terms, the estoppel rule is only applicable to DRS-administered plans and the city employee retirement systems of Seattle, Tacoma, and Spokane. This means, for example, that a PERS 1 retiree who is rehired and becomes an active member of a higher education plan is not prohibited by the estoppel rule from

earning additional benefits while drawing a PERS 1 retirement allowance.

Issues surrounding whether rehired retirees have made a bona fide separation from service and inconsistencies between state retirement systems created by application of the estoppel rule have contributed to criticisms of the existing post-retirement employment program.

Unemployment Insurance

The ambiguity about the nature of retirement and the retirement pension is compounded by the availability of Unemployment Insurance (UI) to persons who retire, are rehired, and again leave the workforce. Generally, unemployment insurance is provided to those who lose their jobs. To qualify, workers must have been in a job covered by unemployment insurance, have worked 680 hours in four of the last five calendar quarters, and be without work through no fault of their own.

Workers who retire are not unemployed. They are considered to have voluntarily left employment and they do not qualify for UI. By returning to work, however, many retirees work in job arrangements that are not permanent. They no longer have an expectation of continued employment beyond a fixed period - normally less than one year. As a result, when they separate from that job, they are considered unemployed. If they worked at least 680 hours in the job, they are eligible for UI even though they are drawing a retirement pension.

While this is not a cost to the retirement plans themselves, it is a cost nonetheless. Critics have referred to "triple dipping" - a process that allows some retirees to collect three types of government payments: 1) a retirement allowance; 2) a salary up to the hour limits for working in a calendar year; and 3) unemployment insurance compensation based on work performed as a retiree receiving a pension. SHB 1829, Chapter 412,

Laws of 2003 requires DRS and the Employment Security Department to notify employers about the possible unemployment compensation consequences of hiring retirees. In California, a 2004 law prohibits a CalPERS employer from hiring a retiree who is receiving pension payments and who received any unemployment insurance compensation related to that employer in the previous twelve months.

This section has provided background information for understanding the post-retirement employment program in the State of Washington. The next section of the report describes the actuarial experience study performed by the Office of the State Actuary as requested by the 2005 Study Mandate.



Fact Sheet

2001 Expansion, Plan 1 Retire-Rehire Program for PERS and TRS.

- ◆ A majority (75 percent) of Plan 1 retirees who retired since the program expansion returned to work for the same employer. (Note: For TRS, an entire school district is considered a single employer.)
- ◆ Since the program expansion, more TRS members (2,799) are using the expanded program than PERS members (1,507).
- ◆ The majority (62 percent) of retirees who have been rehired since 2001 are still working under the prior hour limits.
- ◆ For TRS retirees, a higher percentage of rehired administrators (52 percent) are working over the prior hour limits than teachers (27 percent).
- ◆ TRS retirees who retired since the program expansion were twice as likely (37.3 percent vs. 16.4 percent) to work over the prior hour limits as TRS retirees who retired before the program expansion.
- ◆ A majority (70 percent) of retirees who were rehired since the program expansion were rehired within 12 months of their retirement date.
- ◆ A small number of employers (24) account for nearly half (1,840 or 43 percent) of the rehired retirees.
- ◆ Program utilization rates vary for those employers participating in the program. Thirty-three employers rehired at least 50 percent of their retirees—the highest utilization being 89 percent.
- ◆ For Plan 1 retirees utilizing the program who retired since the program expansion, their average age is 60, their average service is 29 years, their average monthly final compensation is \$5,100, their average monthly benefit is \$2,400, the average length of time they are re-employed is 1.4 years, and the average total number of hours worked as a rehired retiree is 1,423.

See the appendices for more detailed information.



Actuarial Impact of the Current Program

The expansion of the PERS and TRS Plan 1 post-retirement employment program was not a benefit enhancement representing an immediate and easily measurable increase in the plan's retirement liability (like an increase in the retirement benefit formula or an upward adjustment to the Uniform Increase for Plan 1 retirement pensions). Rather, the actuarial impact of this program, if any, would surface through a significant increase in the number of retirements over what is assumed under normal long-term plan experience. Thus, in order to determine whether there is a cost to the program expansion, an experience study was conducted.

Experience Study Methodology

To properly project the cost and liabilities of a pension system, actuarial assumptions are made about future events. In order to check the appropriateness of these assumptions, the actuary compares them to experience. To the extent there are differences, the future contribution requirements may be adjusted.

In certain instances, the actuarial experience may show that a deviation from the expected experience is more than temporary. In such instances, the actuary may make a change in the assumption itself. Changing an assumption has a greater effect on contribution requirements than an annual or biennial experience adjustment.

There are generally two types of actuarial assumptions: economic and demographic. Economic assumptions include assumptions about the growth of inflation, the growth in salaries, the investment rate of return, and the growth in system membership. These are set in statute at RCW 41.45.035. Demographic assumptions are those which can be readily established by statistical studies of past behavior and experience. They include termination rates, retirement

Actuarial Experience Study:

An actuarial experience study compares assumptions with actual statistics of events related to those assumptions. Experience may include estimates where data are incomplete or insufficient.



rates, disability rates and mortality rates. This study focuses on demographics and, in particular, retirement rates.

The Actuarial Standards of Practice address the requirements for selecting demographic and other non-economic assumptions for measuring pension obligations. Generally, the actuary should use professional judgment to estimate possible future outcomes based on past experience and future expectations, and select assumptions based upon application of that professional judgment. A reasonable assumption is one that is expected to appropriately model the contingency being measured and is not anticipated to produce significant cumulative actuarial gains or losses over the measurement period.

Experience studies form one of the important bases for the actuary's judgment in determining the appropriateness of an assumption. These studies usually involve five to six years of data. The most recent Experience Study for the Washington State Retirement Systems was published in January, 2002 and reflects data from the six-year period from 1995 to 2000. Included within that study are demographic findings about probabilities of retirement. However this study predates the retire-rehire program that is the subject of this study and report. (The next experience study for the Washington State Retirement Systems will cover the period from 2001-2006 and will be published in 2008).

The experience study in this report uses data from the four-year period following implementation of the current retire-rehire program on July 1, 2001. Fundamentally, it compares actual retirements to expected retirements. The fiscal impact of the program is determined by studying the retirement experience of retirees who are rehired. The study examines whether retirees who were rehired had significantly different rates of retirement than retirees in general. Accordingly, this study actually contains two

experience studies related to retirement rates for TRS 1 and PERS 1. Actual retirement rates were compared to expected rates for all retirees, and actual versus expected rates were examined after excluding the retirees who were rehired. The retirement experience for rehires was then adjusted for various factors. The experience studies for PERS and TRS Plans 1 do not look at whether rehire experience has increased; rather, the focus is on retirements. This is because any cost to the pension system for the retire-rehire program would result from earlier retirements. Why does earlier retirement have a cost? When retirements that were assumed and funded to occur at a later date occur earlier, the attendant retirement benefits must be paid sooner than expected and over a longer payout period.

In PERS 1 and TRS 1 the benefits are unreduced at age 60 with five years of service, age 55 with 25 years, or at any age with 30 years. Also, the benefit accruals are capped at 30 years. If all members of PERS 1 and TRS 1 retired at the age when their pension benefits had the greatest value (for example as soon as they were eligible for an unreduced annuity) then the cost of these plans would be significantly more than they are now. In PERS 1 and TRS 1 most members do not retire when they first become eligible. The experience that has been observed in the past regarding members working past their earliest retirement ages is built into the assumptions, lowering the cost of the plans. If a new plan feature such as the retire/rehire program encourages members to retire earlier, then there is a cost to the plan for the earlier retirements.

Generally, there is also a loss of the member and employer contributions to the trust fund for the period of earlier retirement. It should be noted, however, that Plan 1 employers who employ retirees for more than the hourly limits that existed prior to the retire-rehire program are currently required to make employer contributions for the entire year, so

there is no loss of employer contributions in this instance.

There are also some savings associated with earlier retirement based on the fact that the benefit is calculated using a lower average final compensation (AFC) and fewer years of service. These savings are limited because of the Plan 1 retirement benefit cap of 60 percent of AFC that already exists. In any event, the cost of earlier retirement (i.e. longer payout) and loss of the member's future contributions far outweigh any savings that result from a benefit based on a lower AFC and fewer years of service (from earlier retirement).

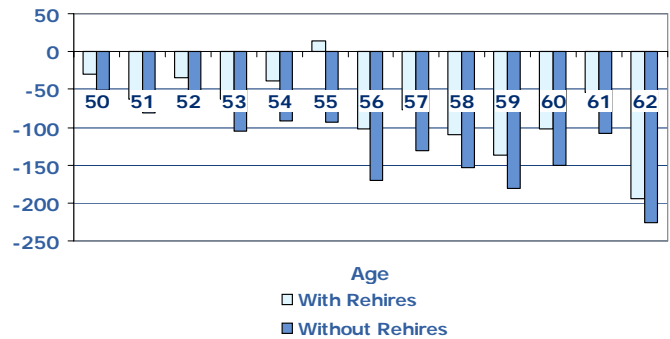
This study looks at retirement data from the inception of the expanded program and compares actual and expected TRS 1 and PERS 1 retirements with the actual and expected retirements of members **excluding those rehired after retirement**. The hypothesis of the study is that the two groups should have the same retirement behavior if retire-rehire has no effect. Since the behavior of the two groups differs, the conclusion of the study is that the retire-rehire program has an effect.

The following graphs illustrate the difference between the two groups at every age. This difference requires a change in the existing assumptions about when members retire. The difference between the two groups is especially noticeable in TRS and explains why the TRS program has a higher cost.



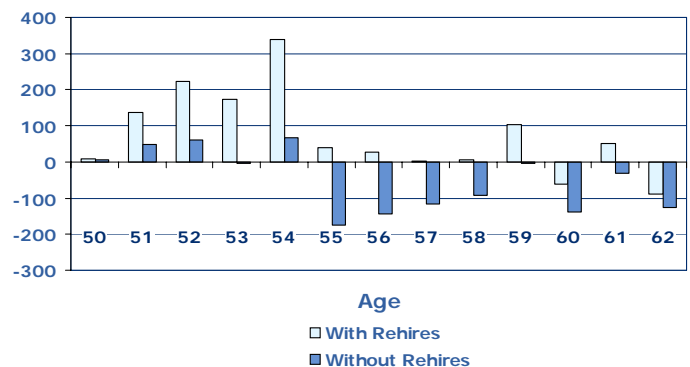
PERS Plan 1

Actual Minus Expected Retirements During Experience Study Period



TRS Plan 1

Actual Minus Expected Retirements During Experience Study Period



By highlighting the experience differential between the two groups, the above graphs illustrate the change in expected retirements at every age since the inception of the 2001 program expansion. For the purpose of determining appropriate costs for the program, these differences are adjusted according to actuarial standards of practice using a series of factors for determining the appropriate amount of the retirement experience that should be attributed to the retire-rehire program and applied to future retirement expectations. The adjustment factors and their application are described in more detail below. Finally, determinations are made regarding the impacts on Plan 1 funding and future contribution rates.

First Adjustment Factor: What portion of all experience do we have?

The first adjustment recognizes that based on actuarial standards of practice this is an incomplete study, as it uses only four or less years of experience instead of the minimum of five years. For that reason, the study recognizes only a percentage of the difference between the two groups based on the applicable portion of actual experience available. For TRS there are four years of experience, so the study recognizes 80 percent of the difference between the two groups. (For TRS, the study treats 3.5 years of data as four years since most teachers retire at the end of a school year. This adjustment factor also includes an adjustment for any decrease in utilization of the program since its early years.) For PERS there is 3.5 years of data available, so the study recognizes 70 percent of the difference between the two groups.

Second Adjustment Factor: What portion of rehires are working over the prior hour limits?

It is not possible to specifically identify from the data whose decision to retire was influenced by the existence of the new program and whose was not. However, this study recognizes that retirees who work over the old hour limits were more likely to have had their retirement decision influenced by the program than members who work under the old limits. Also, they are the only category of retirees that can be said with certainty to be taking advantage of the new program. (Before the new law, members could return to work up to the old limits without having their pension suspended. OSA experience shows that historically, very few members chose to work over the old limits and have their pension suspended.) For all Plan 1 rehires, 40 percent are working over the prior limits, so the experience is adjusted accordingly. Since 40 percent of the rehires are now working over the limits and almost none were before the

program, we recognize 40 percent of the retirement experience of the rehires.

Third Adjustment Factor: Credibility Weighting.

The final factor is a subjective adjustment to determine how much of the remaining experience differential is attributable to the rehire-retire program. This “credibility weighting” is applied due to the fact that there are numerous factors that influence an individual’s decision to retire. What does it mean to use a 50 percent credibility weighting? This means that of those rehires participating in the program, the study assumes that only 50 percent of them retired earlier because of the availability of the program. Thus, in effect, the study uses half of the observed experience in determining the cost of the program.

Applying the Methodology to TRS Plan 1

Looking at the entire group of retirees, there are 17 percent more retirements than expected or assumed for the period. When rehires are removed, there are 25 percent fewer retirements than expected. At ages 50 to 62, the retirement rates with the rehires included were 55 percent greater than the retirement rates with the rehires excluded. Thus one may conclude that rehires are one source of extra and earlier retirements. There is an adjustment for the portion of normal experience available since program inception, i.e. four out of the minimum five years that would normally be required (4/5) for an experience study. Thus the study recognizes 80 percent of the difference between the two groups.

Next, there is an assumption that only those hired after the law change and those working over the limits of the prior law and up to the 1,500-hour limit are affected by the program. 40 percent of TRS rehires work beyond the old hours limit. Accordingly, in analyzing whether rehires in general would retire earlier due to

the program, the study considers 40 percent of the rehires - the 40 percent who work over the prior limits.

Finally, a credibility weighting is applied to the remaining experience differential to determine how much experience would be attributable to the retire-rehire program into the future. A rough adjustment factor of 50 percent is applied in this instance. At the tail end of the plan, retirement rates could diverge greatly from current assumptions.

Combining all the factors, the result for TRS 1 is a total adjustment factor of 16 percent. That combined adjustment factor is applied to the difference in the retirement rates with and without rehires that can be attributed to the program. The retirement rates including the TRS rehires were about 55 percent greater than the rates without the rehires, so the study recognizes 16 percent of this difference. The final result is an assumption that TRS 1 retirement rates increased by 8.8 percent because of the retire/rehire program. Under this scenario, there is a cost to TRS for the program.

Applying the Methodology to PERS Plan 1

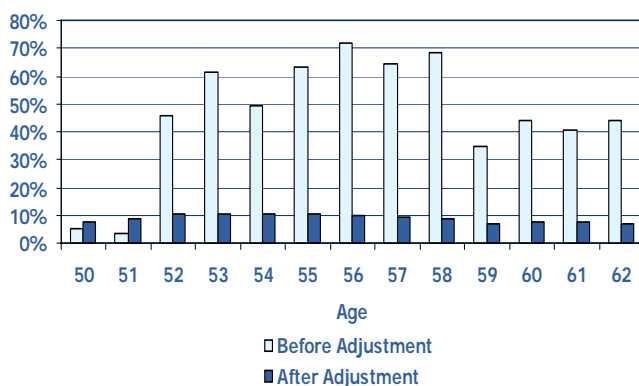
In PERS, if rehires are excluded, retirements are 65 percent of what is currently assumed. If rehires are included, retirements are 77 percent of what is currently expected. From ages 50 to 62, retirement rates including rehires are an average of 19 percent higher than rates excluding rehires. Again, one may conclude that rehires are one source of extra and earlier retirements.

Similar adjustments are used for PERS data as were used for TRS data: a 70 percent adjustment factor for the length of the period used to collect the data (3.5 full years), a 40 percent factor for those who work over the prior hours limit, and a 50 percent credibility rating. These three adjustment factors result in a combined adjustment for PERS of 14 percent, meaning that only 14 percent of the 19 percent experience differential is recognized.

Thus for PERS Plan 1, the result is a recognized impact of a 2.6 percent increase in retirement rates. The impact is similar to that in TRS 1 although different in magnitude. As described in the background section of this report, the PERS program has more constraints than the TRS program, which may help to explain the difference in retirement behavior.

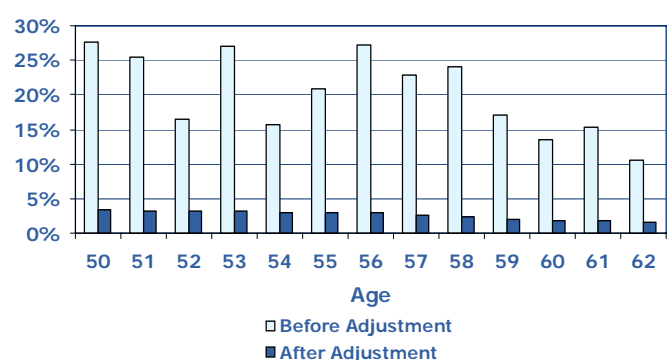
TRS 1

Increase in Retirement Rates Due to Program Changes



PERS 1

Increase in Retirement Rates Due to Program Changes



Fiscal Impacts on Plan 1 Funding and Future Contribution Rates

The fiscal impact of the 2001 program can be expressed as an increase in the Plan 1 employer contribution rate - that is, the percentage of employee payroll that

employers would pay to cover the resulting increase in the Unfunded Actuarial Accrued Liability (UAAL) in the Plans 1. For TRS 1, that increase is six basis points or 0.06 percent of pay. For PERS 1 the increase is 1 basis point or 0.01 percent of pay.

Projected Long-Term Increase in Employer Contribution Rate

Retirement Plan	Required Rate Increase
TRS 1	0.06%
PERS 1	0.01%

Another way of examining the cost of the program is to consider the projected fiscal impacts for the upcoming biennium as well as the 25-year cost of the program. These costs are expressed in millions of dollars, and repre-

sent total costs for all PERS, TRS, SERS and PSERS employers. (As a matter of current funding policy, Plan 1 unfunded liability is spread among all employers.)

Projected Fiscal Impacts Fiscal Cost Summary 2001 Expanded Retire-Rehire Program

Costs (in Millions)			
2007-2009	PERS	TRS	Total
State:			
General Fund	\$0.6	\$3.5	\$4.1
Non-General Fund	<u>\$0.6</u>	<u>\$0.0</u>	<u>\$0.6</u>
Total State	\$1.2	\$3.5	\$4.7
Local Government	<u>\$1.0</u>	<u>\$1.8</u>	<u>\$2.8</u>
Employer Total	\$2.2	\$5.3	\$7.5
Employee	\$0.0	\$0.0	\$0.0
2006-2031			
State:			
General Fund	\$6.8	\$48.5	\$55.3
Non-General Fund	<u>\$8.1</u>	<u>\$0.0</u>	<u>\$8.1</u>
Total State	\$14.9	\$48.5	\$63.4
Local Government	<u>\$13.9</u>	<u>\$24.2</u>	<u>\$38.1</u>
Employer Total	\$28.8	\$72.7	\$101.5
Employee	\$0.0	\$0.0	\$0.0

Preliminary Nature of Experience Study Results

The adjustment factors described in this report and applied to the current data resulted in an approach that recognized a relatively small percentage of the experience change for the purpose of identifying and projecting fiscal impacts. This conservative approach erred on the side of understating rather than overstating the potential cost of the program.

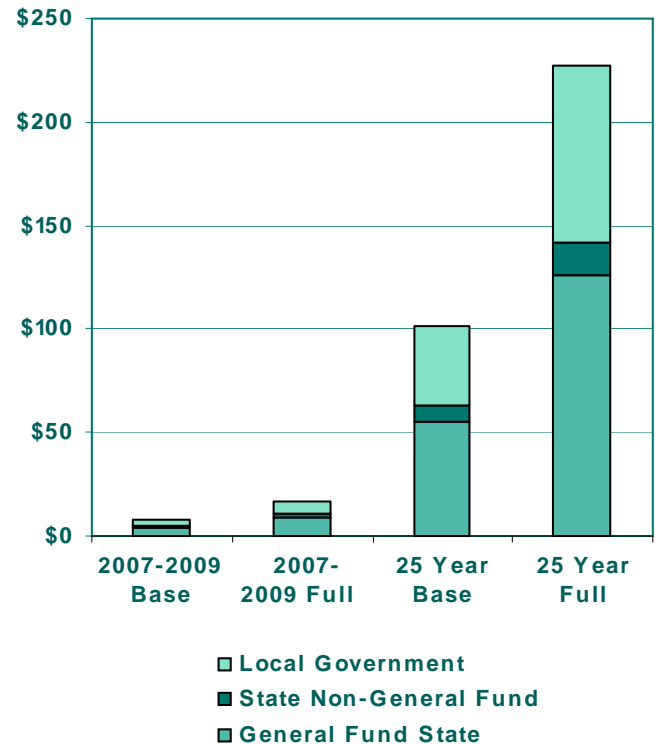
This experience study is preliminary, in that it is not based on data from a complete experience period of at least five years. As additional experience is gained, the adjustment for the partial experience period will fall away. This means that if the same experience continues into the future, the costs of the post-retirement employment program will increase.

One way to consider the potential upper end of future costs is to compare the experience data with and without application of adjustment factors, and the resulting changes in fiscal impacts. First, the adjustment for a partial experience period goes away once there is data for 5 full years for each plan. Secondly, the credibility factor results in a significant adjustment of 50 percent; variations in the application of this factor could result in higher costs over time.

The following graph illustrates fiscal costs of the program with and without application of the adjustment factors to the experience. The fiscal costs identified as “base” are adjusted. The fiscal costs identified as “full” are without adjustment factors.

Full Credibility / Experience

Fiscal Cost Comparison (Dollars in Millions)



Effect on Plan 1 Unfunded Actuarial Accrued Liability (UAAL)

Part of the context for evaluating the appropriate level of cost for any Plan 1 workforce strategy is to consider the Plan 1 UAAL, which currently stands at approximately \$4 billion. Any benefit improvement in the Plans 1 increases the Plan 1 UAAL.

A more accurate view of the fiscal impact of any benefit improvements in the Plans 1 is obtained when they are evaluated in light of the current funding policy for the Plan 1 UAAL, as current funding policy obscures these impacts. Current funding policy for paying the Plan 1 UAAL is twofold: 1) spread the cost out over time - that is, pay the UAAL over an amortization period that extends through June 30, 2024; and 2) spread the cost over more employers - that is, all PERS, TRS, SERS, and, starting July 1, 2006, PSERS employers of members of all the plans within those systems (Plans 1, 2, and 3), including projected new entrants for the systems in the future.

The Plan 1 UAAL payments represent a significant component of required employer contribution rates, and contribution rates are expected to increase significantly over the next several biennia. By 2009 it will cost employers more than 5 percent of payroll just to fund the TRS 1 UAAL alone. In addition, basic contribution rates must cover the normal cost of benefits, meaning employer rates are projected to climb to ultimate levels of about 8 percent for PERS, 12 percent for TRS and 10 percent for SERS (with gain-sharing).

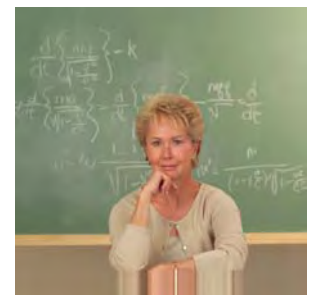
The Plan 1 UAAL is so significant that its costs are more than Plan 1 employers can absorb. As a result, Plan 1 UAAL costs have been socialized, or spread among all PERS, TRS, SERS and, starting July 1, 2006, PSERS employers. Thus all employers pay a total contribution rate equal to the Plan 2/3 normal cost plus the Plan 1 UAAL rate. Due to the existence of this funding policy, the cost of

any Plan 1 benefit improvements must be absorbed by future tax payers and Plan 2/3 employers.

The advantage of this approach is that a workable plan was created to accommodate the payoff schedule for the Plan 1 UAAL. The disadvantage is that Plan 2/3 employers are paying the costs for benefits to members that never rendered services to them. Socializing the cost of the Plan 1 UAAL creates an issue of parity between the plans and fairness in terms of financing the benefits for the plans. It also contributes to obscuring the true cost of any proposed benefit improvements for its members.

The other Plan 1 funding policy that is relevant to any Plan 1 benefit improvements is the statutory goal in RCW 41.45.010(2) that requires full amortization of the UAAL by not later than June 30, 2024. Spreading out the Plan 1 UAAL costs over time makes it appear that Plan 1 benefit increases have less effect on employer contribution rates when in fact, if the legislature used the same funding methodology that it applies to the Plans 2/3, the costs of the benefit improvements would alter contribution rates much more quickly and therefore, more significantly. Payments for the Plan 1 UAAL have already been back-loaded, meaning that UAAL payments must increase over time to reach the deadline of June 30, 2024.

To summarize, an approach to post-retirement employment that creates additional costs has impacts not only on the funding for the Plans 1, but also on employer contribution rates for the other major plans in the Washington State retirement systems.



Alternatives to Existing Program

The 2005 legislative study mandate also directed the State Actuary to present a range of legislative alternatives to the Plan 1 retire-rehire program, including an actuarial analysis of the fiscal impact of proposals to increase the maximum retirement allowance beyond sixty percent of average final compensation. This report examines the following possible alternatives to the current retire-rehire program:



1. Increased benefit accruals in the Plans 1.
2. Amended retire-rehire program.
3. Repeal of the current program.
4. Phased retirement program.
5. Deferred retirement option plan (DROP).

Each alternative is explained below and examined according to the following “views:” actuarial view, employee view, employer view, retirement system view and political view. In each instance, the analysis illustrates the necessity of determining workforce planning goals in order to evaluate whether these or other strategies are appropriate tools for the State of Washington.

System-wide Incentives:

Members who choose to continue working past normal retirement age accrue additional benefits that will enhance their final retirement pension.

The following “windows” illustrate different views of workforce strategies in the public sector.

Actuarial View

- ◆ Identify costs
- ◆ Project future liabilities
- ◆ Monitor experience and assumptions

Employee View

- ◆ Increase long-term financial security
- ◆ Gain flexibility in later years of career
- ◆ Increase level of enjoyment and fulfillment

Employer View

- ◆ Retain experience base
- ◆ Address labor short ages
- ◆ Add workforce flexibility

Retirement System View

- ◆ Manage complexity
- ◆ Communicate change
- ◆ Avoid legal challenges and plan qualification issues

Political View

- ◆ Identify social and financial consequences
- ◆ Consider criticisms and perceptions
- ◆ Manage special interests while maintaining fairness

1. Increase the Maximum Retirement Allowance

Understanding the Alternative

Is there is a desire to keep older Plan 1 employees in the workplace longer? If so, then increasing the maximum retirement allowance is a system-wide incentive for members to work past normal retirement age. Why would such an incentive be needed? An analysis of the design of the Plans 1 of PERS and TRS reveals the answer.

The Plan 1 design anticipates that members will leave the workforce when they complete their career, and a Plan 1 career is expected to span 30 years. Thus, Plan 1 retirees have a benefit formula that restricts benefit accruals after 30 years. Eligible Plan 1 retirees receive 2 percent of the AFC for each year of service credit to a maximum of 60 percent of AFC. Because of this restriction, there is less incentive for Plan 1 members to continue to work once they have reached thirty years of service.

The Plan 1 design is known as a “service-based” design. This means that the plan is designed so that members retire after completing a determined number of years of service. The Plan 1 design is in direct contrast to the design of the Plans 2/3, which are age-based. In those plans, the members retire when they reach a specified age, i.e. age 65.

Unlike the design of the Plans 2/3, the Plan 1 design does not focus on or encourage working until age 65 and beyond. As a result, Plan 1 members tend to retire at earlier ages. Those who retire at earlier ages are more likely to seek opportunities to return to work. If they have already retired, they will prefer plan provisions that allow working after retirement, such as the post-retirement employment provisions that have been implemented for the Plans 1.

An alternative to a post-retirement employment program that encourages working after retirement would be to amend the Plans 1 to change the benefit accrual so that members are rewarded for working longer before retirement. This preemptive approach acknowledges the aspects of Plan 1 design that have led retirees to seek opportunities to be rehired after retirement, and attempts to address the dynamic through a change in the Plan 1 design.

Actuarial View

The option of removing the Plan 1 benefit cap altogether proved to be the most expensive of all the alternatives examined in this report. For this reason, two less expensive alternatives are presented that would still offer some opportunity for members who stay in the workforce to accrue a better benefit. One would allow members to continue to accrue a 1 percent benefit (instead of 2 percent) after reaching 30 years of service. The other would increase the service years in the retirement benefit cap from 30 to 35, allowing members to accrue a 2 percent benefit to a maximum of 70 percent of AFC.

The following table summarizes how increasing the maximum retirement allowance would affect employer contribution rates. Employer contribution rates are expressed as a percentage of payroll. This table assumes that the current program is replaced, and includes the savings that would result.

Employer Contribution Rate Change Summary

(After recognizing program cost)

Option	TRS	PERS
Removing 30-year cap	0.60%	0.25%
1% accrual after 30 years	0.30%	0.10%
35-year cap	0.45%	0.17%

The following tables summarize the fiscal impacts of all three options for increasing the maximum retirement allowance. These tables use the assumption that the current program is replaced, and thus, the savings from such

replacement are already included. The pricing further assumes that all service credit can be counted when calculating the increased benefit.

PERS Fiscal Cost Summary
Plan 1 Cap Amendments
 (After recognizing program cost)

Costs (in Millions)			
2007-2009	Remove Cap	35 yr Cap	1% @ 30 yr
State:			
General Fund	\$14.4	\$10.5	\$7.1
Non-General Fund	<u>\$17.3</u>	<u>\$12.7</u>	<u>\$8.7</u>
Total State	\$31.7	\$23.2	\$15.8
Local Government	<u>\$30.5</u>	<u>\$22.5</u>	<u>\$15.3</u>
Employer Total	\$62.2	\$45.7	\$31.1
Employee	\$0.0	\$0.0	\$0.0
2006-2031			
State:			
General Fund	\$200.2	\$146.5	\$99.9
Non-General Fund	<u>\$240.6</u>	<u>\$176.6</u>	<u>\$120.3</u>
Total State	\$440.8	\$323.1	\$220.2
Local Government	<u>\$424.5</u>	<u>\$311.3</u>	<u>\$212.6</u>
Employer Total	\$865.3	\$634.4	\$432.8
Employee	\$0.0	\$0.0	\$0.0

TRS Fiscal Cost Summary
Plan 1 Cap Amendments
 (After recognizing program cost)

Costs (in Millions)			
2007-2009	Remove Cap	35 yr Cap	1% @ 30 yr
State:			
General Fund	\$32.9	\$24.0	\$15.0
Non-General Fund	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>
Total State	\$32.9	\$24.0	\$15.0
Local Government	<u>\$16.3</u>	<u>\$11.9</u>	<u>\$7.4</u>
Employer Total	\$49.2	\$35.9	\$22.4
Employee	\$0.0	\$0.0	\$0.0
2006-2031			
State:			
General Fund	\$443.5	\$322.6	\$201.4
Non-General Fund	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>
Total State	\$443.5	\$322.6	\$201.4
Local Government	<u>\$222.2</u>	<u>\$161.6</u>	<u>\$101.2</u>
Employer Total	\$665.7	\$484.2	\$302.6
Employee	\$0.0	\$0.0	\$0.0

Fiscal Cost Summary, PERS and TRS Combined Plan 1 Cap Amendments (After recognizing program cost)

Costs (in Millions)			
2007-2009	Remove Cap	35 yr Cap	1% @ 30 yr
State:			
General Fund	\$47.3	\$34.5	\$22.1
Non-General Fund	\$17.3	\$12.7	\$8.7
Total State	\$64.6	\$47.2	\$30.8
Local Government	\$46.8	\$34.4	\$22.7
Employer Total	\$111.4	\$81.6	\$53.5
Employee	\$0.0	\$0.0	\$0.0
2006-2031			
State:			
General Fund	\$643.7	\$469.1	\$301.3
Non-General Fund	\$240.6	\$176.6	\$120.3
Total State	\$884.3	\$645.7	\$421.6
Local Government	\$646.7	\$472.9	\$313.8
Employer Total	\$1,531.0	\$1,118.6	\$735.4
Employee	\$0.0	\$0.0	\$0.0

The actuarial view considers not only cost, but also funding policy. From a funding policy perspective, it is very unusual to change plan design in closed plans. This is because there is no opportunity to fund the benefit improvement by collecting from the members and employers who are affected by the change. This funding policy, known as intergenerational equity, is codified in the actuarial funding chapter, RCW 41.45.010(4). Intergenerational equity cannot be honored in this instance because the Plans 1 were closed in 1977 and virtually all plan members are expected to retire by 2024. If the Plan 1 benefit cap is removed or altered, this benefit improvement will not be paid for over the working lifetimes of those who gain the benefit of this change.

Employee View

From a member perspective, increasing the maximum retirement allowance provides a desirable benefit increase. It is potentially available to anyone who is willing to stay longer in the workforce than is anticipated by the normal retirement eligibility provisions, and would promote benefit adequacy for those who choose to take advantage of it. As a

general matter, this benefit enhancement may provide members with more flexibility in the later years of their career than retire-rehire, as retire-rehire may not be available to all employees. Theoretically in a post-retirement employment program, retirees who seek to be rehired are not guaranteed that an appropriate position will be open for them, or if it is, that they will be chosen to fill the vacancy.

Employer View

Giving members an incentive to work longer can be an advantage for Plan 1 employers who are seeking to retain an experienced workforce. However, as shown above, this is not without a cost. This is not a strategy that can be used to target a particular sector of the workforce, as the change would be plan-wide.

Political View

Politically, this workforce strategy has the advantage of being consistent in that it treats all plan members in a similar fashion; thus, this approach may help to ameliorate criticism. It does not, however, allow legislators to address particular segments of

the workforce in which there may be special needs for recruitment and retention.

The idea of increasing the maximum retirement allowance in the Plans 1 has already been introduced as a legislative proposal in 2005. SB 6127 would have eliminated the 2001 program expansion while increasing the maximum retirement allowance Plan 1 members may receive from 60 percent of average final compensation (AFC) to 70 percent of AFC. This bill did not receive a hearing.

Retirement System View

From the perspective of the plan administrator, the Department of Retirement Systems (DRS), this bill would not create issues with the Internal Revenue Service. It would, however, require communication to members regarding the benefit change. In terms of administrative complexity, this kind of plan change would require some new system programming.

2. Amend the Current Retire-Rehire Program

Understanding the Alternative

This alternative goes to the very heart of whether the current retire-rehire program is working and how it is valued as a workforce strategy. As described in the background section of this report, the expanded retire-rehire program was implemented as a response to shortages of skilled employees – in particular, teachers. The program was intended as a way to retain some of the experience base in the current workforce. Whether the original goals for the program have been met or are continuing to be met is

beyond the scope of this report – however, the inquiry is quite relevant to any legislative decision to alter the current program.

One focus for amending the program would be to evaluate whether the workforce planning goal of this alternative is to simply remove certain problem areas within the existing program, or to accommodate new goals and strategies that were not identified or included in the 2001 expansion. Amendments can be reactive, in that they respond to particular concerns that have been raised about the program, or they can be proactive and anticipate future needs in the public workplace.

The current post-retirement employment program has certainly been the subject of criticism. In fact, many legislative amendments have been proposed since the current program's inception in 2001. Suggested changes to the existing program in the Plans 1 have been largely in direct response to that criticism. Proposed amendments have included the following:

- ◆ Create parity between PERS 1 and TRS 1.
- ◆ Reduce or eliminate the cost of the program.
- ◆ Avoid “insider” agreements to rehire members before they retire.
- ◆ Limit the applicability of the program.
- ◆ Expand the hour limits for the program.

A more detailed summary of legislative proposals to alter the existing program since its inception follows.

Retire-Rehire:

Under retire-rehire, retired members return to work and earn a salary while drawing a retirement pension.

Create Parity

Creating parity between the Plans 1 is in keeping with the statutory benefits policy codified in RCW 41.50.005(1) that the retirement systems of the state shall provide similar benefits wherever possible. SHB 1326 (2005) would have impacted TRS 1 and PERS 1 by incorporating the 2003 PERS 1 changes into TRS 1. If it had passed, TRS 1 members would generally be subject to the same restrictions as currently exist for PERS 1 retirees who seek to work in excess of 867 hours annually, with a few minor exceptions. HB 2640 (2004) and SB 6375 (2004) would also have brought more parity to the Plans 1 if they had passed.

Reduce or Eliminate Cost

HB 2640 (2004) would have reduced costs of the program by increasing employer contribution requirements to pay for the program. This bill would have required employers of TRS 1 employees who work more than 867 hours in a school year to pay both the employer contributions as if the member were active, and an additional amount of employer contributions equivalent to the TRS 1 employee contributions that the employee would have made if active.

SB 5792 (2005) would have addressed the future cost of the 2001 program by eliminating the 2001 provisions allowing retirees to engage in post-retirement employment in excess of 867 hours and up to 1,500 hours without suspension of their pension benefits. Existing employment agreements under the previous law would have continued until December 31, 2005.

Avoid "Insider" Agreements

Insider agreements not only are in violation of the in-service distribution rule of federal law, but they also provoke sharp criticism from plan participants and taxpayers alike. SHB 1326 (2005) would have prohibited any written or verbal agreement to return to work with the same TRS 1 employer. Such agreements would have been nullified and would have

constituted a potential misdemeanor. This prohibition was already implemented for PERS 1 as the result of legislation in 2003.

SB 6375 (2004) would have added the following requirements: six months after hiring a TRS 1 retiree, TRS 1 employers would have been required to reopen the position and accept applications. The same requirement would have applied to PERS 1 employers eight months after hiring a retiree. Another 2005 legislative proposal, SSB 5286, would have required all jobs into which a retiree may be rehired to be advertised publicly.

Limit Applicability of the Program

SSB 5286 (2005) would have limited participation in the 2001 retire-rehire program to those hired into positions identified in a legislative list, and for which a justifiable need has been documented. SHB 1326 (2005) did not go quite as far, but still required both PERS and TRS Plan 1 employers to hire retirees pursuant to a written policy.

Expand the Hour Limits for the Program

In contrast, two proposals would have increased the cumulative lifetime limit on the number of hours retirees may work prior to having their benefits suspended - SB 6375 (2004) and SHB 1326 (2005). SSB 5286 (2005) would have eliminated the existing cumulative lifetime limit in PERS 1 altogether.

In summary, if the goal is to keep the current program and remove some of the perceived problem areas, then amending the program may be the appropriate workforce strategy. Also, there may be new goals and strategies that could be addressed through amendments. Previous proposals indicate that there is not yet a legislative consensus on appropriate program improvements.

Actuarial View

The cost of amendments will vary significantly according to how they affect retirement behavior. The OSA has priced two proposals for amending the current program, both of which would decrease the current program's costs. The elements in the first proposal are contained in SHB 1326/SB 5244 (2005). This bill, a slightly amended version of the SCPP's 2004 interim proposal (SCPP proposal), would bring parity to the Plans 1 by establishing additional controls and restrictions in TRS 1 that are similar to those already in place for PERS 1. It also would increase the cumulative lifetime limit in PERS 1 from 1,900 to 3,165 (hours worked over 867) and would create a new cumulative lifetime limit of 1,900 hours for TRS 1. A copy of the proposal is attached as an appendix. (Note: The original SCPP version proposed a cumulative lifetime of 3,165 hours for both plans.)

The second proposal for amending the current program that was priced by the OSA would apply the SCPP program changes, but would also reduce the retirement benefit paid to retirees while working by 50 percent. This proposal was not introduced as legislation during the 2005 session, but it could be considered as a compromise between retaining an amended program and repealing it altogether.

The following table summarizes how amending the current program would affect employer contribution rates. Employer contribution rates are expressed as a percentage of payroll. The change in employer contribution rates is shown for the SCPP proposal to amend the program, and a proposal for amending it with a 50 percent benefit reduction. For comparison purposes, these two options are presented with "no-cost options" of either repealing the program altogether or charging employers the full cost of the current program expansion. All three options show a savings because they are evaluated in light of the cost of the current program.

Employer Contribution Rate Change Summary

(After recognizing program cost)

Option	TRS	PERS
SCPP Amendments	-0.03%	0.00%
SCPP with 50% Benefit	-0.04%	0.00%
Repeal or Charge Employers	-0.06%	-0.01%



The following tables summarize the fiscal impacts of the amendment proposals as well as the “no-cost options.” These tables also

show savings because the options are evaluated in light of the cost of the current program.

PERS Fiscal Cost Summary Program Amendments (After recognizing program cost)

Costs (in Millions)				
2007-2009	SCPP	SCPP 50%	Repeal	Charge Employer
STATE:				
General Fund	\$0.0	\$0.0	(\$0.6)	(\$0.6)
Non-General Fund	\$0.0	\$0.0	(\$0.6)	(\$0.6)
Total State	\$0.0	\$0.0	(\$1.2)	(\$1.2)
Local Government	\$0.0	\$0.0	(\$1.0)	(\$1.0)
Employer Total	\$0.0	\$0.0	(\$2.2)	(\$2.2)
Employee	\$0.0	\$0.0	\$0.0	\$0.0
2006-2031				
STATE:				
General Fund	\$0.0	\$0.0	(\$6.8)	(\$6.8)
Non-General Fund	\$0.0	\$0.0	(\$8.1)	(\$8.1)
Total State	\$0.0	\$0.0	(\$14.9)	(\$14.9)
Local Government	\$0.0	\$0.0	(\$13.9)	(\$13.9)
Employer Total	\$0.0	\$0.0	(\$28.8)	(\$28.8)
Employee	\$0.0	\$0.0	\$0.0	\$0.0

TRS Fiscal Cost Summary Program Amendments (After recognizing program cost)

2007-2009	SCPP	SCPP 50%	Repeal	Charge Employer
STATE:				
General Fund	(\$1.7)	(\$2.3)	(\$3.5)	(\$3.5)
Non-General Fund	\$0.0	\$0.0	\$0.0	\$0.0
Total State	(\$1.7)	(\$2.3)	(\$3.5)	(\$3.5)
Local Government	(\$0.9)	(\$1.2)	(\$1.8)	(\$1.8)
Employer Total	(\$2.6)	(\$3.5)	(\$5.3)	(\$5.3)
Employee	\$0.0	\$0.0	\$0.0	\$0.0
2006-2031				
STATE:				
General Fund	(\$24.4)	(\$32.4)	(\$48.5)	(\$48.5)
Non-General Fund	\$0.0	\$0.0	\$0.0	\$0.0
Total State	(\$24.4)	(\$32.4)	(\$48.5)	(\$48.5)
Local Government	(\$12.1)	(\$16.2)	(\$24.2)	(\$24.2)
Employer Total	(\$36.5)	(\$48.6)	(\$72.7)	(\$72.7)
Employee	\$0.0	\$0.0	\$0.0	\$0.0

**Fiscal Cost Summary, PERS and TRS Combined
Program Amendments**
(After recognizing program cost)

2007-2009	SCPP	SCPP 50%	Repeal	Charge Employer
STATE:				
General Fund	(\$1.7)	(\$2.3)	(\$4.1)	(\$4.1)
Non-General Fund	\$0.0	\$0.0	(\$0.6)	(\$0.6)
Total State	(\$1.7)	(\$2.3)	(\$4.7)	(\$4.7)
Local Government	(\$0.9)	(\$1.2)	(\$2.8)	(\$2.8)
Employer Total	(\$2.6)	(\$3.5)	(\$7.5)	(\$7.5)
Employee	\$0.0	\$0.0	\$0.0	\$0.0
2006-2031				
STATE:				
General Fund	(\$24.4)	(\$32.4)	(\$55.3)	(\$55.3)
Non-General Fund	\$0.0	\$0.0	(\$8.1)	(\$8.1)
Total State	(\$24.4)	(\$32.4)	(\$63.4)	(\$63.4)
Local Government	(\$12.1)	(\$16.2)	(\$38.1)	(\$38.1)
Employer Total	(\$36.5)	(\$48.6)	(\$101.5)	(\$101.5)
Employee	\$0.0	\$0.0	\$0.0	\$0.0

Employee View

From a member perspective, amending the program could create consistency and simplify the program. However, many of the amendments that have been proposed would be more restrictive than the current program, especially for members of TRS 1. To the extent that restrictions are imposed that are not offset by a corresponding benefit, some members may seek to litigate whether their contractual rights have been violated. (See the discussion involving the repeal alternative for a more complete discussion of the effect of a "no contractual rights clause" on litigation risk.)

Employer View

From an employer perspective, it would reduce costs somewhat to apply more restrictions to the TRS 1 program participants than currently exist. As a workforce strategy, the program could be rendered less effective if, for example, teacher shortages persist and the ability to address them is reduced. On the other hand, expanding the program may increase costs while enabling employers to

offer some workforce flexibility for keeping experienced employees in the workforce.

Retirement System View

Amending the program would have some, but not substantial, administrative impacts on DRS. Some programming changes would be required and member communication efforts would be adjusted accordingly. The primary IRS compliance issue is avoiding in-service distributions by allowing retirees to be rehired only after there has been a bona fide separation from service.

Political View

Managing public relations is one of the many challenges for policy makers who tackle the controversial issue of post-retirement employment. It is likely that perceptions of the program could be improved by amendments that achieve more parity and establish controls to avoid potential abuse. On the other hand, it only takes one high-profile case to attract negative attention to the program.

3. Repeal the Current Program

Understanding the Alternative

A repeal of the current program would be appropriate if the original goals of addressing teacher and other workforce shortages were not being met by the 2001 expansion, or if the costs were determined to be unacceptable in light of program results. The major area of concern in deciding whether to repeal the current program is the legal matter of vested or contractual rights.

Expanding the opportunity to engage in post-retirement employment may be seen as an expanded benefit. As a general matter, once a new retirement benefit has been granted, it cannot be withdrawn without violating the principle set forth in Bakenhus v. City of Seattle, the Washington Supreme Court case that established pension provisions as an integral portion of the contemplated compensation set forth in the contract of employment.

The 2001 legislation that expanded the number of hours PERS and TRS Plan 1 retirees could work before having their benefits suspended included language to limit the affected employees' ability to rely on the expansion as part of their employment contract. The legislation included a "no contractual right" clause. This clause stated that the legislature reserved the right to amend or repeal the provision. The clause further provided that no member or beneficiary of PERS 1 has a contractual right to be employed more than five months in a calendar year without a reduction of his or her pension, and no TRS 1 member or beneficiary has a contractual right to be employed more than 525 hours per year without a reduction of his or her pension. The ability of the legislature to restrict employee reliance upon legislation expanding pension benefits by utilizing a "no contractual right" clause has not yet been tested in the Washington courts.

There are at least two approaches that may be used when lawmakers wish to provide a benefit that may be subsequently taken away. One is to use the "no contractual right" clause. The advantage is that employees are notified up front that they cannot rely on the newly created benefit. The disadvantages of this approach include legal uncertainty and a risk of litigation. In addition, by creating benefits with an uncertain legal status, there is the possibility of violating the federal tax rule requiring that benefits be "definitely determinable," another plan qualification requirement of federal tax law.

An alternative approach is to create temporary pension rights, specifying a window of time within which the rights would be available and then expire. This approach was used in the 2001 legislation, which would have terminated in 2004 according to sunset clauses in the bill that were ultimately vetoed. The "window" or "sunset clause" approach has the advantage of being more certain, but a disadvantage is the need for the legislation to be amended or renewed over time. This approach also creates questions of equity, in that not all members have the opportunity to take advantage of the expanded benefit. Some members will fall within the window and some will not.

A recent U.S. Supreme Court case that was decided in June of this year is worthy of being mentioned, as it reiterates the point that currently accrued benefits must not be affected when post-retirement employment opportunities are expanded and then reduced. The case involved a private plan rather than a public pension plan, and was decided under the "anti-cutback rule" of Employee Retirement Income Security Act (ERISA). ERISA is not applicable to governmental plans. The case is relevant, however, because ERISA cases may be used as persuasive authority in public pension cases when there is no public pension plan law that is directly on point. The anti-

cutback rule is the private sector equivalent of Washington's Bakenhus rule.

The case of Central Laborers' Pension Fund v. Heinz, et al., involved a plan amendment that expanded the kinds of disqualifying employment that would trigger a suspension of benefit payments. In this case, the contested plan amendment was made subsequent to the early retirement of two participants. The court found that the retirees had justifiably relied on the terms of the plan at the time they retired, and that the subsequent plan amendment had effectively reduced their benefits. The Supreme Court cited as support Treasury regulations under Internal Revenue Code Section 411(d)(6) that flatly prohibit plans from attaching new limiting conditions to benefits that an employee has already earned.

Another recent case of interest is the Oregon Supreme Court case, Strunk et. al v. Public Employees Retirement Board, filed March 8, 2005, in the Supreme Court of the State of Oregon. While it was not central to the case, there is discussion of a **"no contractual rights" clause** that was relied upon by the court as a basis for rejecting a breach of contract claim related to the codification of the so-called "Chess Settlement" of previous litigation related to the taxability of pension benefits. The clause read: "No member of the system or beneficiary of a member of the system shall acquire a right, contractual or otherwise, to the increased benefits provided by [ORS 238.375 to 238.380]." The court interpreted this language as manifesting the legislature's clear intent to disavow the creation of any contractual rights.

The Attorney General's office is currently evaluating the legal effect of the "no contractual right clause" in connection with the gain-sharing benefit found in RCW 41.31 and 41.31A. However, even if the AG's office issues an opinion indicating that a no contractual rights clause negates vested

contractual rights, such an opinion would still not protect the state from litigation of the issue should gain-sharing or the retire-rehire program be repealed.

Actuarial View

As a purely fiscal matter, repealing the current program would result in retirement system savings that are at least equivalent to the costs identified by this study as being attributable to the 2001 expansion. These fiscal impacts are summarized in both the Executive Summary and the Actuarial Analysis of this report. Any savings in the Plans 1 would reduce the Plan 1 UAAL and result in lower contribution rates for all PERS, TRS, SERS and PSERS employers.

Legal uncertainty with this alternative, however, leads to uncertainty with respect to the associated costs of the repeal alternative. One risk of repealing and replacing the current program is that, depending on the outcome of any litigation, employers could end up being responsible for both the cost of the existing program and any replacement strategy that may be pursued, not to mention litigation costs.

Employee View

Repealing the current program would take away a benefit that is currently available, at least to some retirees. If employees see the repeal as a reduction in benefits, litigation is a risk. However, if replaced with another benefit, repeal of the current program may not necessarily be objectionable.

Employer View

Assuming that the current program has been effective in helping to alleviate teacher shortages as originally intended, its repeal could lead to a future hiring crunch unless it is replaced with an alternative strategy. Repeal could save employer dollars, depending on whether an alternative strategy is pursued and depending on the ultimate cost of that strat-

egy. Repeal could also be a very costly option for employers due to the cloud of legal uncertainty associated with the current program.

Retirement System View

There is the possibility that litigation would result if the current program were repealed due to the legal uncertainty associated with the non-contractual right clause. If the current program were repealed, DRS would continue to administer a retire-rehire program. That program would simply allow retirees to work (without having their pension suspended) only up to the hour limits in effect prior to the 2001 legislation.

Political View

Repeal of the 2001 program expansion could alleviate some of the criticisms that have been leveled at the legislature since the it was implemented. However the legal implications of this course of action should be carefully weighed. There is certainly the risk of litigation if this alternative is chosen. Even if the state were successful in the litigation, there could be political repercussions from taking away a perceived benefit. In any event, it would be helpful to the legislature to receive information from public employers about whether shortages still persist and whether the expanded retire-rehire program continues to be an effective tool for addressing specific needs in the public workforce. Legal advice from the Attorney General may also be appropriate. Only then can a true “cost-benefit analysis” of the current program be done.

4. Phased Retirement

Understanding the Alternative

A phased retirement program can be designed to facilitate earlier or later retirement, and it may be used as a tool to attract and retain employees by offering additional workplace flexibility. Phased retirement programs may be offered to particular sectors of the workforce (as long as they are not discriminatory) or they may be incorporated into the retirement system at large. Costs can be factored into the design of the program so that they are largely contained. However, allowing participants in phased retirement programs to continue participation in other benefit programs such as health insurance plans may create associated costs.

Phased retirement allows retirement-eligible employees to transition into retirement by reducing hours and job responsibilities. As hours are reduced, pay is reduced. At the same time, participating employees can begin to receive a portion of their accrued retirement benefit. For example an employee may work half-time and draw one-half of his or her earned retirement benefit. Such an employee would maintain dual status: partially retired and partially in-service during the phased retirement period.

Employees who enter a bona fide phased retirement period must be permitted to continue to participate in the plan as if they were still maintaining a full-time work schedule (including calculation of average earnings). To ensure that employees are not disadvantaged by taking phased retirement, compensation during part-time work is translated into full-time compensation, or “annualized.” Thus, for benefit calculation purposes, if an

Phased Retirement:

Members receive part of a retirement benefit and work part-time, while continuing to earn part of a benefit.

employee works 50 percent of a full-time schedule during phased retirement, the employee's plan compensation would equal twice the employee's actual compensation. However the employee's earned service credit would be pro-rated, based on actual hours worked or based on actual compensation. For example, an employee who works 50 percent of a full-time schedule for three years of phased retirement would be credited with 1.5 years of plan service.

What do proposed IRS rules require?

Historically, pension benefits can be legally paid only when a person stops working entirely. A pension plan is defined by federal law as "a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement." Under this definition, the IRS has developed certain limitations on in-service withdrawals of members' funds prior to retirement. In general, a member may not withdraw contributions made by the employer, or earnings on such contributions, before normal retirement, termination of employment or termination of the plan. (Different rules apply to employee contributions).

On November 10, 2004, the IRS published proposed regulations for phased retirement. The proposed regulations represent a departure from the existing in-service distribution rule. IRS and Treasury received comments and held a hearing on March 14, 2005. The phased retirement regulations are proposed to be effective for plan years beginning on or after the date of publication of the final regulations. However, **because the IRS' phased retirement proposal significantly changes the current regulatory structure, it cannot be relied upon until finalized.** Any legislation authorizing phased retirement programs within the Plans 1 would be premature until that time.

The proposed phased retirement rules apply only to qualified defined benefit or money purchase plans because these plans have restrictive in-service distribution rules. Other types of plans such as 403(b) or 401(k) plans could adopt similar phased retirement rules or provide for full or partial in-service distributions at or after age 59½. However 457(b) governmental deferred compensation plans would not generally be allowed to provide payments before the earlier of severance from employment or age 70½.

Phased retirement programs must be carefully structured to fit within the proposed rules in order to maintain status as a qualified plan. The rules are structured to address the primary concern of the IRS that the retirement plan remain a retirement vehicle and provide meaningful benefits throughout the retirement period. Hence, the phased retirement program cannot be used in such a way as to drain retirement benefits for non-retirement purposes.

The following is a summary of the requirements of a phased retirement program under the current IRS proposal:

- ❖ The program must be in writing.
- ❖ It must be available to a group of employees on a non-discriminatory basis.
- ❖ Participation is limited to individuals who have attained age 59½ and are currently eligible to receive retirement benefits immediately. (Older age is permitted, and service conditions can also be imposed. There is more flexibility in the rules for participants who have reached normal retirement age. The term "normal retirement age" requires some additional clarification by the IRS.)

- ❖ Participation must be completely voluntary with the employer and with eligible employees.
- ❖ Participation is limited to full-time employees who are reasonably expected to reduce hours by 20 percent or more. (A written agreement to that effect is advisable).
- ❖ Phased retirement benefits cannot be paid in a lump sum. Single-sum payment distribution or other eligible rollover distributions would not be permitted. A level annuity pay-out is expected using any of the optional forms of benefit payable under the plan.
- ❖ Phased retirement benefits are a pro-rata portion of fully accrued benefits. For example, if the work schedule is reduced to 60 percent of a full-time schedule, the phased retirement benefit is 40 percent of the accrued benefit (to account for the 40 percent drop in hours). Unless an exception applies, the retirement plan must provide for an annual comparison between the number of hours a participating employee actually works during a specified testing period and the number of hours the employee is reasonably expected to work. The phased retirement benefit is adjusted if the hours worked are materially different than the scheduled hours.
- ❖ While the employee is drawing a phased retirement benefit, the employee must also be accruing an additional benefit in the same manner as if he or she was a full-time employee. Compensation is imputed at a full-time schedule and service credit is pro-rated.
- ❖ When the employee fully retires, the employee continues to receive the

phased retirement benefit (including the portion of any previously accrued benefit that had not yet commenced) plus additional accruals earned while working part-time. The additional retirement benefit could also be calculated as the participant's entire accrued benefit, including the additional accruals during the phased retirement period, offset by distributed phased retirement payments.

- ❖ Upon full retirement, the participant could choose an optional form of benefit payment for the additional amount. The phased retirement benefit would continue in the same form as originally chosen, or if the employer permits, in a different form.
- ❖ A plan may offer multiple phased retirement benefits. For example, the employee may initially draw a 20 percent phased retirement benefit for a specified period, and then draw a subsequent 30 percent phased retirement benefit for another specified period.
- ❖ For employees who die while receiving phased retirement benefits, a phased retirement death benefit would be paid under the optional form selected, and a death benefit for the remainder of the employee's accrued benefit would be paid under the plan's provisions for in-service death.

When would PERS and TRS Plan 1 members be able to phase into retirement?

The PERS and TRS Plans 1 have service-based retirement eligibility and provide retirement benefits at ages prior to when members are expected to permanently leave the workforce. There are no provisions for early retirement in

the Plans 1. Members are eligible for normal retirement upon fulfillment of one of the following:

1. Five years of service and attainment of age 60;
2. 25 years of service and attainment of age 55; or
3. 30 years of service.

The proposed IRS rules require that employees be at least 59½ to participate in a phased retirement program. Thus, under the current IRS proposal, a phased retirement program would not be particularly useful for promoting earlier retirements in PERS and TRS 1.

However, if the goal is to encourage members to work past the dates at which they would have otherwise retired, then phased retirement programs may have some utility in the Plans 1.

Based on 2004 valuation data, the average retirement age is 60.13 years for PERS 1 members and 58.38 years for TRS 1 members (excluding disability retirements). Providing the flexibility for these employees to continue to work part-time and accrue an additional partial benefit while receiving a portion of their normal retirement benefit may be enough of an incentive to keep some of these retirement-eligible employees in the workforce longer than they may have otherwise remained.

Actuarial View

Phased retirement programs are intended to be cost-neutral from an actuarial perspective. However, true actuarial cost can only be measured with actual plan experience in relation to the plan's assumptions. If, for example, the program causes employees to scale back their hours and leave full time employment sooner than they would have otherwise, the long-term cost of funding the plan increases. On the other hand a phased retirement program could be designed so that employees work past the retirement age at

which they otherwise would have left the workforce, thereby providing an actuarial gain to the plan.

Employee View

The philosophy of phased retirement has shifted somewhat over the last five years. Initially it was viewed as a way for employers to reshape the end of work based on workforce needs. Now, as the baby boom generation is reaching retirement age, phased retirement is being viewed as a tool for employees to achieve enhanced financial security as well as increased enjoyment in their later working years. As the result of this shift, phased retirement programs are becoming more aligned with worker preferences.

Employees who move to part-time status will often lose other benefits such as health insurance and disability coverage, and find them difficult to replace. There are no IRS proposals to address health and welfare benefits in phased retirement, so employees may seek policy changes that would allow participants in these programs to receive continued coverage while working reduced hours.

Employer View

The employer view in the Plans 1 has shifted. In past years early retirement windows were implemented on several occasions for the Plans 1: 1980, 1982, 1992, and 1993. Now, employers are concerned with a shrinking labor pool and are trying to keep experienced workers on the job for as long as possible. A phased retirement program can keep people working longer by offering flexibility to late-career employees.

Presumably most employers will want discretion to accept or reject individual employees interested in participating in a phased retirement program. However, the greater the discretion to turn down individuals, the more

likely that those decisions will be challenged as being tainted by unlawful discrimination, either under the federal Age Discrimination in Employment Act (ADEA) or state and local anti-discrimination laws.

Retirement System View

Implementation of a phased retirement program within the Plans 1 would require significant administrative efforts in terms of IRS compliance testing, new system programming, and integration with other programs (like retire-rehire). An opinion of tax counsel or an IRS letter ruling may be necessary or advisable prior to implementing a phased retirement program.

Political View

The availability of a phased retirement benefit may be viewed as similar to other “optional forms” of benefits, which ordinarily cannot be cut back or taken away without raising issues about vested contractual rights. Legislators may want to consider whether a phased retirement program would be subject to a “no contractual right clause” or “sunset clause.”

In conclusion, phased retirement program objectives may vary depending on the needs of employers and employees. A phased retirement program may support strategies to encourage older workers to delay retirement, but it may also be used to attract and retain mid-career workers. Such programs may also target particular sectors of the workforce, as long as they are not discriminatory.

Any phased retirement strategy that may be adopted for the Washington State Retirement

Systems should be designed with workforce characteristics in mind. Member profiles for the Plans 1 are considerably different than for the Plans 2/3.

5. Deferred Retirement Option Plan (DROP)

Understanding the Alternative

DROPs were pioneered by police and firefighter plans. These plans tend to have earlier normal retirement requirements than many public sector plans and also tend to have many participants electing to retire early. Thus, early DROPs were designed as an enticement for retirement age employees to stay on the job a little longer.

Since the onset of DROPs 20 years ago, they have been implemented for many state and local plans. They are also gaining popularity in teacher retirement plans for jurisdictions that find it difficult to replace qualified teachers quickly enough to cover all those now eligible to retire. From the employer perspective, DROPs may be used to manage critical workforce shortages by encouraging employees to stay longer, or they may be structured as an incentive to retire early. They may be designed to have a cost or to be cost neutral. From the employee perspective, DROPs may offer competitive benefits or plan flexibility that is otherwise unavailable under traditional plan designs.

A standard DROP is available to members when they become eligible for retirement. If the member elects to participate, the employee makes an election to enter the DROP for a set

DROP - Deferred Retirement Option Program:

In a DROP, members “retire” and direct their retirement pension into a special account while continuing to work for the same employer. At the conclusion of the DROP period, they have access to the accumulated benefits in the account. Members do not accrue new service credit during the DROP period.

period. During the DROP period, the employee actually moves from being an active participant who is accruing benefits to being a retiree (for pension purposes). The employee continues to work and receive compensation during the DROP period, but not service credit. In the meantime, the monthly retirement benefit that the member would have received (or a portion of it) is deposited into a special account during the DROP period. Assets in the DROP account earn interest at a rate defined under the plan's provisions. The DROP may be designed with or without continued contributions based on the employee's salary.

In a standard DROP, the member's election to participate is usually irrevocable, requires cessation of employment at the end of the DROP period (usually one to five years) and results in a lump sum benefit. The interest earned on the DROP account may be a fixed percentage or a variable amount depending upon some index, or in some cases, based upon investment options selected by the employee. Some DROP designs allow participating employees to make additional contributions to their DROP accounts. When the employee terminates employment at the end of the DROP period, the retirement benefit is then paid directly to the employee and the balance in the DROP account can be distributed or rolled over according to plan rules.

Actuarial View

A critical consideration in designing a DROP is the cost to the retirement system. Many DROP programs are intended to be cost-neutral from an actuarial perspective. If a DROP is offered to all employees as an actuarially equivalent option to an existing retirement program, then there would appear to be no cost impact to the plan. However, true actuarial cost can only be measured with actual plan experience in relation to the plan's assumptions. If, for example, the DROP causes employees to retire earlier than they would otherwise, the

employer's long-term cost of funding the plan increases. This is because pension benefits must be funded over a shorter period of time and paid over a longer period.

The cost of a DROP program is further increased when the DROP is designed to subsidize early retirement. This is because employees who work past early retirement age provide an actuarial gain to the plan each year that they continue to work rather than receive retirement benefits. A DROP participant can continue to receive wages and still take advantage of an early retirement subsidy, thereby eliminating this actuarial gain. In order to minimize increased cost, plans may allow DROP elections only at a specified retirement age.

Some DROP plans are designed to control the utilization rate and therefore the cost of the DROP. For example, the deposit into the DROP account during the DROP period may be an amount that is less than 100 percent of the monthly benefit calculated at the time of the DROP election. This design offsets costs. Another way to control the financial impact of a DROP is to control the amount of interest earnings. DROPs with cost-neutral designs often include features that limit benefit payments and make the DROP election less attractive. In addition, there are costs and administrative burdens of implementing a DROP.

Employee View

DROP programs are popular with employees in defined benefit plans because they combine the flexibility of a defined contribution plan with the security of their defined benefit plan. DROP programs can give participants' retirement a "jump-start" by using a lump-sum payout from the DROP account to pay off debt, make a large purchase, or invest the amount for future financial needs such as health care costs or protection from inflation. At the same time the participant is still guaranteed to receive monthly retirement

income for life, even if it is a lower benefit than the participant would have received but for the DROP distribution. Another advantage of DROPs is that they can be used to reallocate pension income to the early retirement years prior to Social Security and Medicare eligibility or, alternatively, since they are eligible for rollover, to defer taxable income to later years if that is desirable.

Employer View

A major reason for employers to implement a DROP is to influence employee behavior. DROPs can be used to retain experienced employees who are eligible to retire, but who cannot yet be replaced with existing employees. Alternatively, variations on the DROP design can be used to encourage earlier retirement, allowing employees to take advantage of any early retirement subsidies or incentives that may be available. They may also provide additional income during the early years of retirement to bridge the gap between employment income and Social Security retirement or Medicare eligibility. In order to be consistent with clearly established goals, a DROP must be carefully designed.

Ultimately, it is impossible to predict who will opt for DROP and who will stick with the traditional pension plan. This can cause unintended consequences. The City of Philadelphia added DROP to its municipal pension plan in 1999. The goal was to retain older workers and their considerable on-the-job expertise. The program worked for police and firefighters, whose average retirement age was pushed back. But DROP had the opposite effect for other city employees. On average, they started to retire two years earlier than expected. Some departments found themselves in a staffing crunch, as DROP created a wave of retirements all at once.

As in the case of phased retirement, the availability of a DROP may be viewed as similar to other “optional forms” of benefits, which ordinarily cannot be cut back or taken

away without raising issues about vested contractual rights. Legislators may want to consider whether a DROP would be subject to a “no contractual right clause” or “sunset clause.”

Retirement System View

IRS compliance is always a concern for the plan administrator, and compliance issues can arise in connection with a DROP. For example, if the interest credited to a DROP account is based on actual earnings rather than a fixed rate, the DROP benefit may be treated as a separate defined contribution plan subject to limitations set forth in Section 415(c) of the Internal Revenue Code. If the DROP allows for an interest rate that is subject to discretion by the plan sponsor, an issue may be raised as to whether benefits under the plan are “definitely determinable,” which could trigger questions about plan qualification. DROPs with maximum age restrictions may have implications under age discrimination laws. The advice of tax counsel is helpful when dealing with these kinds of issues.

Political View

Critics say DROPs have played a prominent role in recent high-profile pension scandals such as those in San Diego and Houston. Houston adopted a DROP in the late 1990s, first for police and firefighters and then for all employees. The original DROP guaranteed a generous 8.5 percent rate of interest on DROP accounts. When stock market returns on plan funds went negative for two years in a row, the city was still responsible for the guaranteed DROP investment returns and the large member payouts they helped produce. Also, in San Diego, a generous DROP plan has been pegged by critics as contributing to a large pension funding shortfall that triggered downgrades on the city’s bond rating and a federal investigation.

DROPs have also grabbed headlines when they resulted in very large lump sums for highly

paid, high-profile retirement system members - especially in the late 1990s when DROP accounts could be invested for very high returns. Such media accounts led to public relations concerns for elected officials and

plan sponsors. Some of these concerns were ameliorated when the stock markets cooled. Also, DROP designs may be modified to avoid the effects of market volatility.

Summary of Alternatives

	Actuarial View	Employee View	Employer View	Retirement System View	Political View
Retire-Rehire (Current)	Costs are determined over time.	Job may not be available.	Can address workforce shortages.	In place.	Controversial; popular with certain stakeholders.
Increase Maximum Allowance	Most costly.	System-wide benefit.	Provides incentives to work longer.	Requires program changes and member communication.	More consistent. More costly.
Amend Current Program	Cost varies.	More parity; more restrictions possible.	Could interfere with employer goals.	Litigation likely with certain amendments.	Litigation likely with certain amendments.
Repeal Current Program	Saves benefit costs.	Takes something away.	Could magnify shortages/lead to hiring crunch.	Litigation likely.	Litigation likely.
Phased Retirement	Targets costs.	Provides flexibility.	Facilitates retention of older workers.	Very complex; breaks new ground.	Responds to workforce trends and older employees; IRS regs. not final; timing uncertain.
DROP	Targets costs; some risk.	Provides flexibility.	Facilitates retention or replacement of older workers.	Very complex; some risks of unintended consequences.	Possible criticism for effects on highly paid employees; some risk of unintended consequences.



The Changing Workforce

Economic, Demographic and Social Trends

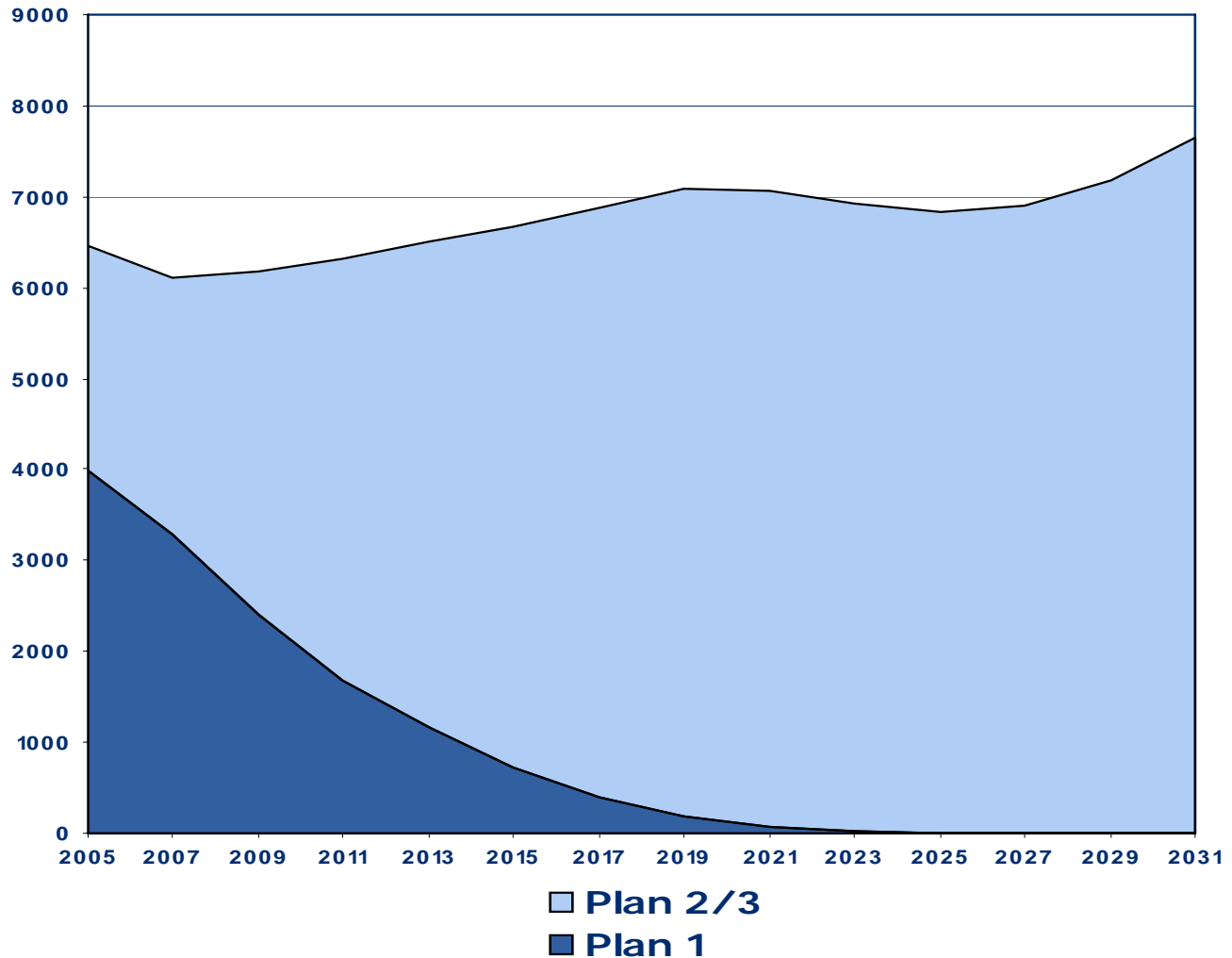
Washington's 2001 legislation that expanded post-retirement employment opportunities was largely in response to a shortage of experienced teachers and other employees that were in high demand during the most expansive point in the last business cycle. The following discussion is intended to highlight some of the current trends that continue to create pressure on policy makers as they address the issue of post-retirement employment. This is not to suggest that policy makers must respond to such pressures, or that there is a right or wrong way to respond. The purpose of this section is simply to highlight some of the developments that continue to bring the issue of post-retirement employment to the forefront.

In the State of Washington, the total number of retirements for PERS and TRS is projected to steadily increase over the next forty years. The following chart shows the projected retirements from active status in PERS and TRS based on data from the 2004 Actuarial Valuation. The chart illustrates that Plan 1 members will have totally left the workforce in less than two decades.



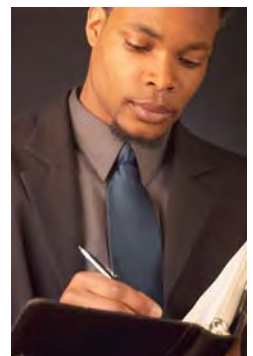
"This section...highlights some of the developments that continue to bring the issue of post-retirement employment to the forefront."

PERS and TRS Projected Active Retirements



This projection of retirements does not portend a massive looming labor shortage in the government workforce. However, there is some concern that imminent baby boomer retirements will create a shortage of experienced workers. This trend is coupled with the slower rate of growth in the number

of workers entering the workforce generally. The number of people in the U.S. labor force age 55 or older will increase 32 percent by 2010, while the number of workers age 35 to 44 will shrink 10.2 percent during the same period, according to the federal Bureau of Labor statistics.



The Pew Charitable Trusts' "Government Performance Project" recently found that 64 percent of the State of Washington's 46,000 full-time classified employees could retire by 2015. The report identified Washington as the only state in the union where the percentage of state workers eligible to retire topped 60 percent. Runners-up included Maine at 59 percent, Tennessee at 58, Michigan at 56 and Pennsylvania at 54.

This does not mean that all these workers would immediately retire from the state workforce. Retirement "eligibility" includes those eligible for early retirement in the Plans 2/3, as well as all employees eligible for normal or unreduced retirement. In the Plans 2/3, members who retire early will see a substantial reduction in their monthly pension benefit and are therefore not likely to retire when they are first eligible. The statistics offered by the Pew study are useful, however, as they offer some understanding of who makes up the state workforce.

The Washington Department of Personnel's Task Force examined the impact of aging trends on the Washington State government workforce (June 2000) and found the following:

- ❖ The state will experience significantly higher turnover due to increasing retirement rates, with some agencies and job categories impacted to a much greater extent than others.
- ❖ In 18 agencies, including some of the state's largest, 15-29 percent of the PERS Plan 1 workforce will be eligible to retire by 2005.
- ❖ More than 50 percent of executive level and 30 percent of mid-level managers will be eligible to retire by 2005.

- ❖ Over 50 percent of the state workforce is in the 40-54 age group and at the mid-career stage or more.

The 2000 Task Force had several recommendations that are relevant to the issue of post-retirement employment and the relatively recent expansion of retire-rehire opportunities in the State of Washington:

- ❖ Hire retirees as a source of experienced workers.
- ❖ Eliminate barriers to using retirees as part-time workers by reducing restrictions on post-retirement employment and/or allowing exceptions so that agencies can provide health care coverage as an incentive for retirees to work part-time.
- ❖ Explore options to help retain experienced workers, such as scheduling flexibility, telecommuting, assignment or career changes, leave options and downshifting.

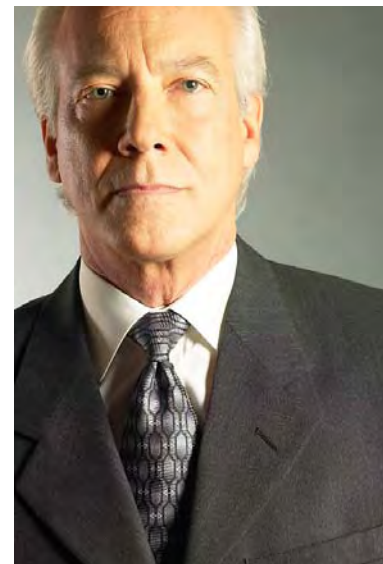
On the federal level, the changing workforce is reflected in changes to the federal Social Security law as of January 2000 that eliminated the Retirement Earnings Test for individuals age 65-69. (It remains in effect for those ages 62-64). This test had required that if seniors continued to work from age 65 to 70, their benefits were reduced \$1 for every \$3 earned above \$17,000. The withheld benefits were then returned, in general with interest, in the form of higher benefits after stopping work, or at age 70.

The test was not eliminated because older Americans aren't working. Rather, the law eliminating the test - the Senior Citizens' Freedom to Work Act of 2000 - was touted as

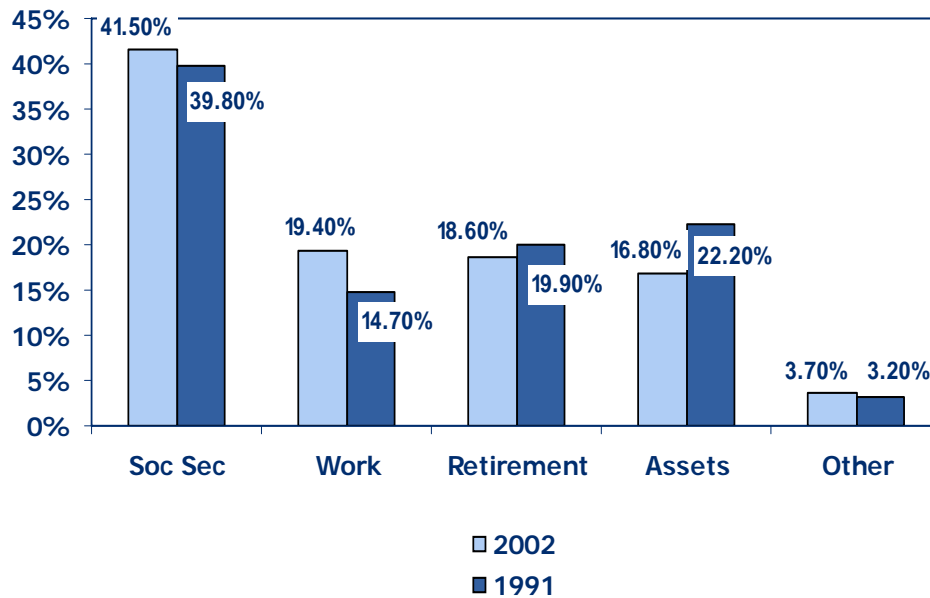
“an important step toward preparing the economy for the demographic challenge of the baby boom.” At that time there were 9.6 million people between the ages of 65 and 69, of which 3.0 million were working in Social Security covered employment. The number of people in that age group was projected to double to 20.3 million by the year 2030. (National Economic Council, April 6, 2000.)

Today the full retirement age under Social Security is increasing. As explained on the Social Security Administration’s website, www.ssa.gov, Americans are living longer, healthier lives and can expect to spend more time in retirement than their parents and grandparents did. (See also Adequacy of Benefit, Report to the SCPP, June 2004 for more information on the aging workforce.) Today Social Security’s full retirement age of 65 applies only to those born in 1937 or earlier. For those born after 1937, a full retirement age schedule has been adopted. The later the birthday, the later the full retirement age. For example, those who are born in 1960 or later have a full retirement age of 67. Persons covered by Social Security can retire as early as 62, but their benefits are reduced to take into account the longer period of time they will receive them.

Social Security Retirement Age	
Year of Birth	Full Retirement Age
1937 or earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67



Sources of Income After Age 65



As the Social Security retirement age is increasing, employees are becoming more dependent on income from work after age 65. The Employee Benefit Research Institute has published statistics comparing the 2002 percentage distribution of average income by source for the population age 65 and over to the same figures from 1991. In 2002, 19.4 percent of the income for this group was from earnings from work, 41.5 percent of income was from Social Security, 18.6 percent was from retirement plans of various types, 16.8 percent was income from assets, and 3.7 percent was income from all other sources, including financial assistance, non-pension survivor benefits, disability, unemployment compensation, workers' compensation, veterans' benefits, and public assistance.

These figures were slightly different in 1991, when there was a higher percentage of income from assets (22.4 percent) and less reliance on income from work (14.7 percent). Social Security represented 39.8 percent of income in 1991, 19.9 percent of income was from retirement plans of various types, and 3.2 percent of income was from all other sources.

Employees are also indicating a need or desire to work longer. Among 2,001 workers between the ages of 50 and 70 recently polled by the American Association of Retired Persons (AARP), nearly 70 percent said they planned to continue working past the age of 65, and almost half said they envisioned working into their 70s or beyond. Pre-retirees cited various reasons for believing they will continue to work, including needing money (22 percent), needing health benefits (17 percent), staying mentally active (15 percent), being productive or useful (14 percent), and remaining physically active (9 percent).

Finally, employees are expressing interest in how their work life is structured in their late careers. A recent Watson Wyatt study of workers at or near retirement age indicated that a majority of survey participants would like to work fewer hours later in their careers, but less than half of them expect their employer to offer this opportunity. When asked how they would like to phase into retirement, many older workers said they hope to work part-time (63 percent) or work more flexible hours (48 percent) before retiring completely. Nearly 2/3 (63 percent) of current workers aged 50 and older indicated that they would like to phase into an entirely different career.

Among those currently participating in phased retirement, 80 percent work flexible hours and 79 percent work part-time. Two-thirds (67 percent) have less responsibility in their current job compared with their career job. (See “Older Workers Would Delay Retirement if Employers Offered Phasing,” Watson Wyatt Press Release, March 22, 2004.)

Whether older workers retire and return to work, or whether they are given incentives to remain within the workforce, the trend in Washington and throughout the country is toward an aging workforce. Both public and private employers are concerned with sector shortages that may result from an increase in the retirement rate and are looking for ways to keep experienced workers involved in the workforce. (See Adequacy of Retirement Benefit Report to the SCPP, June 2004.)

Federal Perspectives

The 2002 Federal Human Capital Survey (with over 100,000 respondents) found that more than one out of every three federal employees said they are considering leaving government service. In response to these statistics and other similar findings, federal agencies have been developing human capital plans over the last several years. To offset the coming retirement wave, more federal agencies are using reemployed retirees to help fill the knowledge and skills gap in the government workforce.

Historically, federal law has discouraged retirees from coming back to work for the government. General policy has been to deduct the value of retirees’ pensions from their salaries when they return to work. This “dual compensation penalty” is designed to prevent large numbers of government workers from retiring as soon as they are eligible, collecting their pensions, getting rehired in their old jobs and taking home both their salary and their pensions.

This policy is changing with workforce

dynamics. Already military retirees can collect their pensions and work as federal employees with no major penalty. In the Department of Defense, which anticipates a coming retirement wave, the Pentagon has overhauled the civil service workforce rules to allow retirees who become employed in the department to collect a paycheck and their pension as authorized by the 2004 Defense Authorization Act. In the State Department, retired foreign service officers are allowed to come back to work for the government, but are limited to working six months a year and are used on projects that require special skills.

In the aftermath of September 11, federal agencies are allowed to waive the dual compensation penalty if they are having extreme problems filling critical positions or if they are faced with an emergency. Otherwise, most federal civilian retirees have to be hired as contractors to avoid the dual compensation limits. This has caused the federal Office of Personnel Management to consider other ways to involve retirees in bridging the knowledge and skills gaps in the federal workforce. The following are some of the strategies being considered:

Phased Retirement: Retirement-age employees continue in their old jobs but with scaled back hours.

Retiree Job Bank: Retirees work up to a certain number of hours each year without adversely affecting their pensions.

Emeritus Program: Retirees keep an office and e-mail address at their organization and come in periodically.

Part-time Retired Annuitant/Project Team Consultant: Retirees are part of a project team on a limited basis to share expertise and solve specific problems.

Mentoring Program: Retirees serve as a mentor in a formal mentoring program in their

organization.

Knowledge Sharing Forums: Retirees meet periodically with up-and-coming individuals to share stories, lessons learned and insights.

Rehearsal Retirement/Boomerang Job: After employees retire for a few months or a year, they then bounce back to their organization and work limited hours.

Job-Sharing: Two or more retirees share a job.

Facilitator of an Online Community of Practice: Retirees act as moderators of an online community in their area of expertise.

Knowledge Capture/Retention Program: Retirees are interviewed via video, with their interviews accessible over the web in their organization.

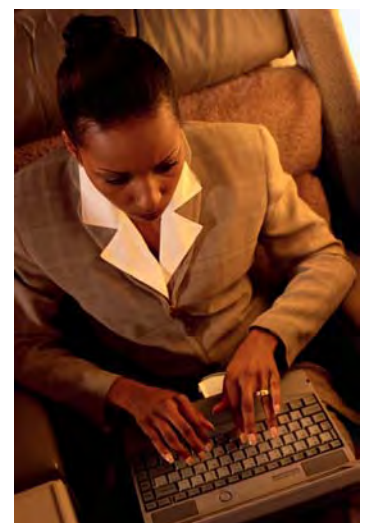
Source: Liebowitz, Jay, Bridging the Knowledge and Skills Gap: Tapping Federal Retirees, IBM Center for the Business of Government, Summer 2004.

Most retirement experts agree that the aging workforce is a trend that is causing some to question how retirement plans and benefits programs are structured. The challenge for policy makers is to distinguish short-term cycles from long-term trends. This is particularly important in the public pension context, as retirement systems are more suited for addressing long-term rather than short-term goals.

Public pension plans are designed and funded over multiple decades. Frequent changes in the benefit structure of public pension plans can contribute to contribution rate instability and inadequacy, as well as possible generational inequities in terms of taxpayer funding. Also, because of well-established legal principles recognizing the contractual nature of pension benefits, it is virtually impossible to take away benefits once they have been given. Even if benefit reductions are prospective and apply only to new hires, there is political difficulty in offering less to new employees than what has been previously offered.

Challenges in Responding to Trends: Should the Retirement System be Used as Personnel Tool?

Part of the philosophical debate surrounding post-retirement employment practices is whether retirement systems should be used as a tool in solving personnel issues. Proponents argue that retirement benefits are part of the total compensation package and should be used to address the needs of a changing workforce. Opponents argue that compensation issues should be addressed directly through salary increases, and retirement systems should be utilized only for retirement, i.e. providing security to employees who are no longer working.





Conclusion

Retire/rehire provisions are used to attract retired workers back to the work force after retirement. They tend to be used with plans that have service-based retirement provisions as in the Plans 1 for TRS and PERS. Washington's current program may be retained, repealed or amended. This report has identified some of the costs and consequences associated with these courses of action.

Another category of tools may be used to retain older workers who are still in the workforce by increasing benefit accruals and other incentives for those working longer periods of years and later in life. Some of these kinds of provisions are already built into the Plans 2/3 of the Washington State Retirement Systems. Several alternatives for increasing the maximum retirement allowance in the Plans 1 have been priced and presented in this report.



The legislature may also wish to consider the possibility of implementing a phased retirement program or a DROP. The design of a phased retirement program will be contingent upon final IRS regulations, and a DROP must be designed with current IRS requirements in mind. These alternatives represent significant program changes. Either program could be designed to achieve specific outcomes and to manage costs. In any event, it will be necessary to define the goals for any program changes in order to effectively implement an alternative workforce strategy.

Whether existing workforce strategies are retained or new strategies are implemented, any resulting increases in Plan 1 costs will be magnified by the existence of the Plan 1 unfunded actuarial accrued liability. Under current funding policy, this multibillion dollar pension liability must be retired by no later than June 30, 2024. Contribution rates for all retirement system employers (including for the Plans 2/3) are already projected to increase significantly in the future in order to address the existing liability. As a result, in deciding whether to incur a cost in connection with any Plan 1 benefit enhancements, policy makers will need to balance the need for long-term benefit security in the Plans 1 against the more immediate human resource needs that may be emerging in the public workforce.





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Appendix A

Plan 1 Rehires Retiring Since July 1, 2001

Average						
System	Years Rehired	Hours Rehired	Service	Age	Benefit	AFC
PERS	1.2	1,493	27.6	60.2	\$2,477	\$4,769
TRS	1.5	1,401	29.3	59.7	\$2,363	\$5,331
PERS & TRS	1.4	1,423	28.7	59.9	\$2,402	\$5,137

AFC: Average Final Compensation



Appendix B

Retiree Rehires Reported in Eligible Positions for School/Calendar Year-End

Note: Return to work data as of March, 2005

Note: PERS 2001 based on six months of data.

Plan 1 Members Retiring Before July 1, 2001						
SYSTEM	Hours Worked	School/Calendar Year				TOTAL COUNT
		2001 COUNT	2002 COUNT	2003 COUNT	2004 COUNT	
PERS (Calendar Year)	Worked up to 840/867 hours	76	351	325	296	1,048
	Worked over 840/867 hours	21	240	266	258	785
	% working over 840/867 hours		40.6%	45.0%	46.6%	42.8%
TRS (School Year)	Worked up to 840/867 hours	0	2,319	2,187	1,947	6,453
	Worked over 840/867 hours	0	437	448	381	1,266
	% working over 840/867 hours		15.9%	17.0%	16.4%	16.4%

Plan 1 Members Retiring On or After July 1, 2001						
SYSTEM	Hours Worked	School/Calendar Year				TOTAL COUNT
		2001 COUNT	2002 COUNT	2003 COUNT	2004 COUNT	
PERS (Calendar Year)	Worked up to 840/867 hours	19	226	304	371	920
	Worked over 840/867 hours	0	97	229	296	622
	% working over 840/867 hours		30.0%	43.0%	44.4%	40.3%
TRS (School Year)	Worked up to 840/867 hours	0	687	840	1,209	2,736
	Worked over 840/867 hours	0	323	653	654	1,630
	% working over 840/867 hours		32.0%	43.7%	35.1%	37.3%

PERS and TRS Plan 1 New Service Retirees by School/Calendar Year Members Retiring After June 30, 2001 and Rehired by March 31, 2005

Note: PERS 2001 rehires based on 6 months of data.

Note: 2004 service retiree counts are based on preliminary data.

System	Group	School/Calendar Year				TOTAL COUNT
		2001 COUNT	2002 COUNT	2003 COUNT	2004 COUNT	
PERS (Calendar Year)	Service retirees	1,052	2,159	1,868	1,808	6,887
	Rehired within 12 months	185	379	261	272	1,097
	Rehired after 12 months	111	188	111	n/a	410
TRS (School Year)	Service retirees	1,525	1,487	1,216	1,321	5,549
	Rehired within 12 months	479	510	393	519	1,901
	Rehired after 12 months	391	317	190	n/a	898

Summary of Utilization	PERS	TRS	Total
Total Rehired	1,507	2,799	4,306
%Retirees Rehired	22%	50%	35%
%Rehired within 12 months	73%	68%	70%
%Working Under 840/867	60%	63%	62%
%Working Over 840/867	40%	37%	38%

Note: Return to work data provided by the Department of Retirement Systems, summarized by OSA, and was not audited.



Appendix C

TRS Retiree Rehires By Position Type Members Retiring Between July 2001 and March 2005 With Reported Hours

POSITION	Expected to Work Under 840/867 hrs	Expected to Work Over 840/867 hrs	Total	% Over 840/867
	COUNT	COUNT	COUNT	%
ADMINISTRATOR	164	175	339	52%
OTHER	63	43	106	41%
TEACHER	1,260	460	1,720	27%
Total	1,487	678	2,165	31%

Note: Members averaging 90+ hours/month in 2005 calendar/school year projected to work over the hours limit.

Note: Return to work data provided by the Department of Retirement Systems, summarized by OSA, and was not audited.



Appendix D

Retiree Rehires by Employer Employers Hiring More than 25 Retirees Members Retiring Between July 2001 and March 2005

Note: Members averaging 90+ hours/month in 2005 calendar/school year projected to work over the hours limit.

Note: Return to work data provided by the Department of Retirement Systems, summarized by OSA, and was not audited.

Note: Retirees Employed includes members who retired from a different employer.

Employer	Retired From Employer	Rehired by Employer	Retirees Employed	Working Over Limit	Working Under Limit	No hours reported
SEATTLE SD 001	388	134	152	39	75	38
SOCIAL & HEALTH SERV DEPT OF	690	125	140	39	26	75
TACOMA SD 010	246	121	136	22	66	48
PUYALLUP SD 003	104	83	99	25	25	49
UNIVERSITY OF WA	483	56	64			64
NORTHSHORE SD 417	124	51	62	12	40	10
N THURSTON PUBLIC SCHOOLS - SD	88	51	60	10	31	19
TRANSPORTATION DEPT OF	274	54	56	17	8	31
SPOKANE PUBLIC SCHOOLS	196	48	56	4	35	17
KING CO	261	50	55	5	5	45
VANCOUVER SD 037	126	47	54	11	34	9
EVERGREEN SD 114	115	47	54	10	36	8
HIGHLINE SD 401	116	50	54	8	11	35
EDMONDS SD 015	129	45	54	12	27	15
RENTON SD 403	88	45	53	29	15	9
LAKE WASHINGTON SD 414	124	47	53	7	32	14
YAKIMA SD 007	111	36	50	11	33	6
BELLEVUE SD 405	115	41	45	17	14	14
ISSAQUAH SD 411	80	30	41	13	18	10
KENNEWICK SD 017	77	35	38	11	19	8
FEDERAL WAY SD 210	123	31	37	9	16	12
KENT SD 415	141	30	35	7	20	8
KC METRO	218	33	34	5	6	23
SHORELINE SD 412	95	27	33	10	21	2
MUKILTEO SD 006	49	22	32	6	20	6
EMPLOYMENT SECURITY DEPT OF	175	27	31	11	2	18
AUBURN SD 408	70	26	31	13	12	6
CLOVER PARK SD 400	76	27	31	15	10	6
EVERETT SD 002	81	22	31	4	17	10
WA STATE UNIVERSITY	121		55	6	18	31
TACOMA SD 010	86	25	29	2	1	26
BETHEL SD 403	60	24	29	15	9	5
BELLINGHAM SD 501	65	24	29	3	21	5
LABOR & INDUSTRIES DEPT OF	146	27	27	13	7	7
Total	5,441	1,541	1,840	421	730	689

Retiree Rehires by Employer

Employers With Five or More Retirements and a 20%+ Rate of Rehire

Members Retiring Between July 2001 and March 2005

Note: Members averaging 90+ hours/month in 2005 calendar/school year projected to work over the hours limit.

Note: Return to work data provided by the Department of Retirement Systems, summarized by OSA, and was not audited.

Note: Retirees Employed includes members who retired from a different employer

Employer	Retired From Employer	Rehired by Employer	% Rehired	Retirees Employed	Working Over Limit	Working Under Limit	No hours reported
UTILITIES & TRANSPORTATION COM	9	8	89%	9	3	2	4
PUYALLUP SD 003	104	83	80%	99	25	25	49
SULTAN SD 311	10	7	70%	7	2	5	
SELAH SD 119	16	11	69%	14	1	10	3
CAMAS SD 117	16	11	69%	11	2	4	5
COMMUNITY COLLEGE OF SPOKANE	9	6	67%	14		11	3
CLOVER PARK TECHNICAL COLLEGE	8	5	63%	6		2	4
NACHES VALLEY SD 003 JT	13	8	62%	9	3	4	2
YELM SD 002	23	14	61%	20	12	2	6
ENUMCLAW SD 216	30	18	60%	20	4	13	3
N THURSTON PUBLIC SCHOOLS - SD	88	51	58%	60	10	31	19
RAYMOND SD 116	7	4	57%	6		4	2
EVERETT PORT OF	7	4	57%	4	1	1	2
OTHELLO SD 147	7	4	57%	4	1	1	2
S BEND SD 118	7	4	57%	4		3	1
PUYALLUP SD 003	16	9	56%	11	1		10
SEATTLE COMMUNITY COLLEGE	36	20	56%	22			22
STEVENSON-CARSON SD 303	9	5	56%	6	1	4	1
RAINIER SD 307	9	5	56%	6	3	3	
YAKIMA VALLEY COLLEGE	11	6	55%	10	1	7	2
BAINBRIDGE ISLAND SD 303	24	13	54%	14	6	6	2
ABERDEEN SD 005	28	15	54%	16	3	11	2
WHITE RIVER SD 416	15	8	53%	10	2	5	3
EASTMONT SD 206	29	15	52%	18	1	12	5
RENTON SD 403	88	45	51%	53	29	15	9
ANACORTES SD 103	12	6	50%	15	7	6	2
SUNNYSIDE SD 201	12	6	50%	6	1		5
ED SERV DIST 105	6	3	50%	6	3	3	
MEAD SD 354	8	4	50%	4			4
HOQUIAM SD 028	8	4	50%	4			4
QUILLAYUTE SD 402	6	3	50%	3			3
SAN JUAN ISLAND SD 149	6	3	50%	3		1	2
LA CONNER SD 311	6	3	50%	3	2		1
TACOMA SD 010	246	121	49%	136	22	66	48
TAHOMA SD 409	21	10	48%	16	8	6	2
SNOQUALMIE VALLEY SD 410	34	16	47%	18	8	8	2
KENNEWICK SD 017	77	35	45%	38	11	19	8
CHEHALIS SD 302	22	10	45%	15	1	13	1
WHITE PASS SD 303	11	5	45%	7	3	3	1
TOPPENISH SD 202	11	5	45%	6	1	2	3
GREEN RIVER COMMUNITY COLLEGE	11	5	45%	5			5
MUKILTEO SD 006	49	22	45%	32	6	20	6
UNIVERSITY PLACE SD 083	38	17	45%	22	12	8	2
KETTLE FALLS SD 212	9	4	44%	7	1	5	1

Employer	Retired			Retirees Employed	Working Over Limit	Working		No hours reported
	From Employer	Rehired by Employer	% Rehired			Under Limit		
N FRANKLIN SD 051	9	4	44%	5	2	1		2
HIGHLINE SD 401	116	50	43%	54	8	11		35
DEER PARK SD 414	7	3	43%	5		4		1
CHIMACUM SD 049	7	3	43%	4	1	3		
PORT TOWNSEND SD 050	7	3	43%	4		4		
GOLDENDALE SD 404	7	3	43%	4		4		
CASHMERE SD 222	7	3	43%	3		3		
NINE MILE FALLS SD 325	7	3	43%	3		2		1
LAKE STEVENS SD 004	31	13	42%	19	10	5		4
KIONA-BENTON CITY SD 052	12	5	42%	7	3	4		
PRINTING DEPT OF	12	5	42%	5		1		4
QUILLAYUTE SD 402	12	5	42%	5		2		3
GRAND COULEE DAM SD 301	12	5	42%	5		5		
NORTHSHORE SD 417	124	51	41%	62	12	40		10
EVERGREEN SD 114	115	47	41%	54	10	36		8
FERNDAL SD 502	27	11	41%	18	2	8		8
PORT ANGELES SD 121	47	19	40%	23	2	14		7
BETHEL SD 403	60	24	40%	29	15	9		5
OAK HARBOR SD 201	10	4	40%	7				7
CASCADE SD 228	10	4	40%	4	1	1		2
LIBERTY SD 362	10	4	40%	4		3		1
COLVILLE SD 115	13	5	38%	7	2	4		1
ENUMCLAW SD 216	13	5	38%	5	1			4
LAKE WASHINGTON SD 414	124	47	38%	53	7	32		14
ISSAQUAH SD 411	80	30	38%	41	13	18		10
OAK HARBOR SD 201	48	18	38%	19		15		4
COLLEGE PLACE SD 250	8	3	38%	4	1	1		2
HIGHLAND SD 203	8	3	38%	4	1	3		
VANCOUVER SD 037	126	47	37%	54	11	34		9
AUBURN SD 408	70	26	37%	31	13	12		6
SNOHOMISH SD 201	35	13	37%	21	6	12		3
FRANKLIN PIERCE SD 402	46	17	37%	21	2	17		2
BELLINGHAM SD 501	65	24	37%	29	3	21		5
OTHELLO SD 147	19	7	37%	8	2	6		
HOQUIAM SD 028	19	7	37%	7	2	4		1
MONROE SD 103	33	12	36%	15	4	8		3
N BEACH SD 064	11	4	36%	7		5		2
BELLEVUE COMMUNITY COLLEGE	11	4	36%	5				5
W VALLEY SD 208	11	4	36%	4				4
STANWOOD-CAMANO SD #401	25	9	36%	15	3	9		3
MOUNT VERNON SD 320	28	10	36%	14	3	9		2
EVERGREEN STATE COLLEGE	14	5	36%	5	1			4
BELLEVUE SD 405	115	41	36%	45	17	14		14
CLOVER PARK SD 400	76	27	36%	31	15	10		6
SHELTON SD 309	17	6	35%	10	3	6		1
KELSO SD 458	40	14	35%	17	5	10		2
EDMONDS SD 015	129	45	35%	54	12	27		15
INFORMATION SERVICES DEPT OF	23	8	35%	8	8			
SEATTLE SD 001	388	134	35%	152	39	75		38
ENERGY NORTHWEST	58	20	34%	20	11	5		4
MERCER ISLAND SD 400	32	11	34%	17	2	11		4

Employer	Retired From Employer	Rehired by Employer	% Rehired	Retirees Employed	Working Over Limit	Working Under Limit	No hours reported
LONGVIEW SD 122	60	20	33%	21	4	12	5
GRANDVIEW SD 200	15	5	33%	8	4	1	3
LONGVIEW SD 122	21	7	33%	7		1	6
EPHRATA SD 165	18	6	33%	6		2	4
BLAINE SD 503	9	3	33%	6	3	3	
PENINSULA COLLEGE	6	2	33%	5		3	2
BELLEVUE COMMUNITY COLLEGE	6	2	33%	4		3	1
EPHRATA SD 165	6	2	33%	3	1		2
VASHON ISLAND SD 402	9	3	33%	3		2	1
BREWSTER SD 111	6	2	33%	3	1	1	1
METHOW VALLEY SD 350	6	2	33%	3		3	
NASELLE-GRAYS RIVER VALLEY SD	6	2	33%	3		2	1
HIGHLINE COMMUNITY COLLEGE	6	2	33%	2		1	1
OKANOGAN CO PUD 01	6	2	33%	2		1	1
YELM SD 002	6	2	33%	2			2
LAKE STEVENS SD 004	6	2	33%	2	1		1
ED SERV DIST 105	6	2	33%	2			2
LAKE CHELAN SD 129	6	2	33%	2			2
BATES TECHNICAL COLLEGE	6	2	33%	2			2
BATTLE GROUND SD 119	52	17	33%	23	9	9	5
YAKIMA SD 007	111	36	32%	50	11	33	6
CENTRAL KITSAP SD 401	53	17	32%	18	2	10	6
BURLINGTON-EDISON SD 100	22	7	32%	12	2	6	4
PENINSULA SD 401	51	16	31%	17	3	10	4
PROSSER SD 116	16	5	31%	6	2	2	2
MOSES LAKE SD 161	26	8	31%	8	2	5	1
WALLA WALLA CO	13	4	31%	4			4
N KITSAP SD 400	36	11	31%	19	6	11	2
MARYSVILLE SD 025	60	18	30%	22	4	9	9
E VALLEY SD 090	20	6	30%	8	2	5	1
QUINCY SD 144	10	3	30%	4	3		1
RIVERSIDE SD 416	10	3	30%	4		4	
DOUGLAS CO	10	3	30%	3	1		2
HEALTH DEPT OF	51	15	29%	17	5	5	7
CENTRALIA SD 401	34	10	29%	14	3	6	5
SUNNYSIDE SD 201	17	5	29%	9	3	5	1
EVERETT SD 002	24	7	29%	9	2		7
TACOMA SD 010	86	25	29%	29	2	1	26
SUPERINTENDENT OF PUBLIC INSTR	21	6	29%	7	3	2	2
ED SERV DIST PUGET SOUND	7	2	29%	7	1	2	4
FINANCIAL MANAGEMENT OFFICE OF	14	4	29%	5	2	1	2
COMMUNITY TRADE & ECONOMIC DEV	14	4	29%	5		3	2
BREMERTON SD 100	14	4	29%	5		1	4
PASCO SD 001	14	4	29%	5			5
TUMWATER SD 033	7	2	29%	3	2	1	
ORTING SD 344	7	2	29%	3	2	1	
E VALLEY SD 090	7	2	29%	2		2	
SHORELINE SD 412	95	27	28%	33	10	21	2
SEDRO WOOLLEY SD 101	25	7	28%	9	1	6	2
ELLENSBURG SD 401	18	5	28%	6	4		2

Employer	Retired From Employer	Rehired by Employer	% Rehired	Retirees Employed	Working Over Limit	Working Under Limit	No hours reported
WALLA WALLA SD 140	40	11	28%	11	2	9	
S KITSAP SD 402	55	15	27%	19	1	16	2
CENTRAL WA UNIVERSITY	33	9	27%	12			12
AGRICULTURE DEPT OF	22	6	27%	10	3	1	6
MEDICAL LAKE SD 326	22	6	27%	9		7	2
KENNEWICK CITY OF	11	3	27%	3			3
EVERETT SD 002	81	22	27%	31	4	17	10
PASCO SD 001	37	10	27%	12	5	4	3
WESTERN WA UNIVERSITY	41	11	27%	11			11
W VALLEY SD 208	27	7	26%	9	1	6	2
BREMERTON SD 100	31	8	26%	10	2	2	6
SUMNER SD 320	35	9	26%	11	2	6	3
RICHLAND SD 400	51	13	25%	15	6	6	3
FEDERAL WAY SD 210	123	31	25%	37	9	16	12
ATTORNEY GENERAL	40	10	25%	12	6	3	3
KING CO PUBLIC HEALTH DEPT	16	4	25%	4		1	3
PENINSULA SD 401	16	4	25%	4			4
ABERDEEN SD 005	12	3	25%	4			4
EDMONDS COMMUNITY COLLEGE	8	2	25%	3			3
FINLEY SD 053	8	2	25%	3	2		1
MERIDIAN SD 505	8	2	25%	3	3		
ELMA SD 068	8	2	25%	2	1		1
REARDAN-EDWALL SD 009	8	2	25%	2	2		
SPOKANE PUBLIC SCHOOLS	196	48	24%	56	4	35	17
CORRECTIONS NORTHEAST REGION	25	6	24%	12	5		7
VANCOUVER SD 037	51	12	24%	13		5	8
BELLEVUE SD 405	17	4	24%	4	2		2
LAKE WASHINGTON SD 414	30	7	23%	7		2	5
REVENUE DEPT OF	57	13	23%	13	5		8
HOUSE OF REPRESENTATIVES	18	4	22%	9	2		7
TUKWILA SD 406	18	4	22%	5	2		3
PERSONNEL DEPT OF	9	2	22%	4	1	2	1
STEILACOOM HISTORICAL SD 001	9	2	22%	3	1		2
GREEN HILL SCHOOL	9	2	22%	2		2	
CHENEY SD 360	9	2	22%	2			2
COMMUNITY COLLEGE OF SPOKANE	32	7	22%	8			8
STATE PATROL WA	56	12	21%	12	3	4	5
EVERGREEN SD 114	14	3	21%	3	1	1	1
OLYMPIA SD 111	75	16	21%	23	5	7	11
KENT SD 415	141	30	21%	35	7	20	8
RENTON SD 403	24	5	21%	6	1		5



Appendix E

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5937

Chapter 10, Laws of 2001

(partial veto)

57th Legislature
2001 Second Special Session

POSTRETIREMENT EMPLOYMENT--RETIREMENT SYSTEM RETIREES

EFFECTIVE DATE: 7/1/01 - Except section 12, which becomes effective 12/31/04.

Passed by the Senate June 20, 2001
YEAS 39 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House June 19, 2001
YEAS 84 NAYS 1

FRANK CHOPP

**Speaker of the
House of Representatives**

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved June 26, 2001, with the
exception of sections 5 and 6, which
are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
ENGROSSED SUBSTITUTE SENATE BILL 5937
as passed by the Senate and the House
of Representatives on the dates hereon
set forth.

TONY M. COOK

Secretary

FILED

June 26, 2001 - 11:47 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5937

AS AMENDED BY THE HOUSE

Passed Legislature - 2001 2nd Special Session

State of Washington**57th Legislature****2001 Regular Session**

By Senate Committee on Ways & Means (originally sponsored by Senators Shin, Rasmussen, Jacobsen, Winsley, Kohl-Welles and McAuliffe; by request of Governor Locke and Superintendent of Public Instruction)

READ FIRST TIME 03/08/01.

1 AN ACT Relating to postretirement employment for teachers'
2 retirement system, public employees' retirement system, and school
3 employees' retirement system retirees; amending RCW 28A.405.900,
4 41.32.570, 41.40.037, 41.32.802, 41.32.860, 41.32.862, 41.35.060,
5 41.40.037, and 41.40.750; creating new sections; providing effective
6 dates; providing expiration dates; and declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** (1) The department of retirement systems,
9 the office of the superintendent of public instruction, the department
10 of personnel, and the health care authority shall jointly develop
11 publications for use during the 2001-03 biennium to explain options
12 for, and implications of, postretirement employment for members and
13 retirees of the teachers' retirement system plan 1 and the public
14 employees' retirement system plan 1.

15 (2) The publications shall address such issues as: (a) Health
16 insurance coverage upon reemployment; (b) health benefit options upon
17 termination of postretirement employment; (c) sick leave, annual leave,
18 and other compensation practices; (d) options for, and implications of,
19 reentry into active retirement system membership; (e) hiring procedures

1 for retirees; and (f) collective bargaining rights and
2 responsibilities.

3 **Sec. 2.** RCW 28A.405.900 and 1990 c 33 s 404 are each amended to
4 read as follows:

5 Certificated employees subject to the provisions of RCW
6 28A.310.250, 28A.405.010 through 28A.405.240, 28A.405.400 through
7 28A.405.410, 28A.415.250, and 28A.405.900 shall not include those
8 certificated employees hired to replace certificated employees who have
9 been granted sabbatical, regular, or other leave by school districts,
10 and shall not include retirees hired for postretirement employment
11 under the provisions of this act.

12 It is not the intention of the legislature that this section apply
13 to any regularly hired certificated employee or that the legal or
14 constitutional rights of such employee be limited, abridged, or
15 abrogated.

16 **Sec. 3.** RCW 41.32.570 and 1999 c 387 s 1 are each amended to read
17 as follows:

18 (1) (a) If a retiree enters employment with an employer sooner than
19 one calendar month after his or her accrual date, the retiree's monthly
20 retirement allowance will be reduced by five and one-half percent for
21 every seven hours worked during that month. This reduction will be
22 applied each month until the retiree remains absent from employment
23 with an employer for one full calendar month.

24 (b) The benefit reduction provided in (a) of this subsection will
25 accrue for a maximum of one hundred forty hours per month. Any monthly
26 benefit reduction over one hundred percent will be applied to the
27 benefit the retiree is eligible to receive in subsequent months.

28 (2) Any retired teacher or retired administrator who enters service
29 in any public educational institution in Washington state and who has
30 satisfied the break in employment requirement of subsection (1) of this
31 section shall cease to receive pension payments while engaged in such
32 service(~~(: PROVIDED, That service may be rendered up to five hundred~~
33 ~~twenty-five hours per school year without reduction of pension.~~

34 ~~— (3) In addition to the five hundred twenty-five hours of service~~
35 ~~permitted under subsection (2) of this section, a retired teacher or~~
36 ~~retired administrator may also serve only as a substitute teacher for~~

~~1 up to an additional three hundred fifteen hours per school year without~~
~~2 reduction of pension if:~~
~~3 (a) A school district, which is not a member of a multidistrict~~
~~4 substitute cooperative, determines that it has exhausted or can~~
~~5 reasonably anticipate that it will exhaust its list of qualified and~~
~~6 available substitutes and the school board of the district adopts a~~
~~7 resolution to make its substitute teachers who are retired teachers or~~
~~8 retired administrators eligible for the extended service once the list~~
~~9 of qualified and available substitutes has been exhausted. The~~
~~10 resolution by the school district shall state that the services of~~
~~11 retired teachers and retired administrators are necessary to address~~
~~12 the shortage of qualified and available substitutes. The resolution~~
~~13 shall be valid only for the school year in which it is adopted. The~~
~~14 district shall forward a copy of the resolution with a list of retired~~
~~15 teachers and retired administrators who have been employed as~~
~~16 substitute teachers to the department and may notify the retired~~
~~17 teachers and retired administrators included on the list of their right~~
~~18 to take advantage of the provisions of this subsection; or~~
~~19 (b) A multidistrict substitute cooperative determines that the~~
~~20 school districts have exhausted or can reasonably anticipate that they~~
~~21 will exhaust their list of qualified and available substitutes and each~~
~~22 of the school boards adopts a resolution to make their substitute~~
~~23 teachers who are retired teachers or retired administrators eligible~~
~~24 for the extended service once the list of qualified and available~~
~~25 substitutes has been exhausted. The resolutions by each of the school~~
~~26 districts shall state that the services of retired teachers and retired~~
~~27 administrators are necessary to address the shortage of qualified and~~
~~28 available substitutes. The resolutions shall be valid only for the~~
~~29 school year in which they are adopted. The cooperative shall forward~~
~~30 a copy of the resolutions with a list of retired teachers and retired~~
~~31 administrators who have been employed as substitute teachers to the~~
~~32 department and may notify the retired teachers and retired~~
~~33 administrators included on the list of their right to take advantage of~~
~~34 the provisions of this subsection.~~
~~35 (4) In addition to the five hundred twenty-five hours of service~~
~~36 permitted under subsection (2) of this section, a retired administrator~~
~~37 or retired teacher may also serve as a substitute administrator up to~~
~~38 an additional one hundred five hours per school year without reduction~~
~~39 of pension if a school district board of directors adopts a resolution~~

~~declaring that the services of a retired administrator or retired teacher are necessary because it cannot find a replacement administrator to fill a vacancy. The resolution shall be valid only for the school year in which it is adopted. The district shall forward a copy of the resolution with the name of the retired administrator or retired teacher who has been employed as a substitute administrator to the department.~~

~~(5) In addition to the five hundred twenty-five hours of service permitted under subsection (2) of this section and the one hundred five hours permitted under subsection (4) of this section, a retired principal may also serve as a substitute principal up to an additional two hundred ten hours per school year without a reduction of pension if a school district board of directors adopts a resolution declaring that the services of a retired principal are necessary because it cannot find a replacement principal to fill a vacancy. The resolution shall be valid only for the school year in which it is adopted. The district shall forward a copy of the resolution with the name of the retired principal who has been employed as a substitute principal to the department.~~

~~(6) Subsection (2) of this section shall apply to all persons governed by the provisions of plan 1, regardless of the date of their retirement, but shall apply only to benefits payable after June 11, 1986.~~

~~(7) Subsection (3) of this section shall apply to all persons governed by the provisions of plan 1, regardless of the date of their retirement, but shall only apply to benefits payable after September 1, 1994), after the retiree has rendered service for more than one thousand five hundred hours in a school year. When a retired teacher or administrator renders service beyond eight hundred sixty-seven hours, the department shall collect from the employer the applicable employer retirement contributions for the entire duration of the member's employment during that fiscal year.~~

(3) The department shall collect and provide the state actuary with information relevant to the use of this section for the joint committee on pension policy.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five hundred twenty-five hours per year without a reduction of his or her pension.

1 **Sec. 4.** RCW 41.40.037 and 1997 c 254 s 14 are each amended to read
2 as follows:

3 (1)(a) If a retiree enters employment with an employer sooner than
4 one calendar month after his or her accrual date, the retiree's monthly
5 retirement allowance will be reduced by five and one-half percent for
6 every eight hours worked during that month. This reduction will be
7 applied each month until the retiree remains absent from employment
8 with an employer for one full calendar month.

9 (b) The benefit reduction provided in (a) of this subsection will
10 accrue for a maximum of one hundred sixty hours per month. Any benefit
11 reduction over one hundred percent will be applied to the benefit the
12 retiree is eligible to receive in subsequent months.

13 (2)(a) A retiree from plan 1 who has satisfied the break in
14 employment requirement of subsection (1) of this section and who enters
15 employment with an employer may continue to receive pension payments
16 while engaged in such service for up to one thousand five hundred hours
17 of service in a calendar year without a reduction of pension. When a
18 plan 1 member renders service beyond eight hundred sixty-seven hours,
19 the department shall collect from the employer the applicable employer
20 retirement contributions for the entire duration of the member's
21 employment during that calendar year.

22 (b) A retiree from plan 2 or plan 3 who has satisfied the break in
23 employment requirement of subsection (1) of this section((7)) may work
24 up to ((five months per)) eight hundred sixty-seven hours in a calendar
25 year in an eligible position, as defined in RCW 41.32.010, 41.35.010,
26 or 41.40.010, or as a fire fighter or law enforcement officer, as
27 defined in RCW 41.26.030, without suspension of his or her benefit.

28 (3) If the retiree opts to reestablish membership under RCW
29 41.40.023(12), he or she terminates his or her retirement status and
30 becomes a member. Retirement benefits shall not accrue during the
31 period of membership and the individual shall make contributions and
32 receive membership credit. Such a member shall have the right to again
33 retire if eligible in accordance with RCW 41.40.180. However, if the
34 right to retire is exercised to become effective before the member has
35 rendered two uninterrupted years of service, the retirement formula and
36 survivor options the member had at the time of the member's previous
37 retirement shall be reinstated.

1 (4) The department shall collect and provide the state actuary with
2 information relevant to the use of this section for the joint committee
3 on pension policy.

4 (5) The legislature reserves the right to amend or repeal this
5 section in the future and no member or beneficiary has a contractual
6 right to be employed for more than five months in a calendar year
7 without a reduction of his or her pension.

8 ***NEW SECTION.** *Sec. 5. Sections 2 and 3 of this act expire June*
9 *30, 2004.*

10 **Sec. 5 was vetoed. See message at end of chapter.*

11 ***NEW SECTION.** *Sec. 6. Section 4 of this act expires December 31,*
12 *2004.*

13 **Sec. 6 was vetoed. See message at end of chapter.*

14 **NEW SECTION.** *Sec. 7.* The office of the state actuary shall review
15 the actuarial impact of the temporary expansion of the postretirement
16 employment limitations provided by sections 3 and 4 of this act. No
17 later than July 1, 2003, the state actuary shall prepare a report for
18 the joint committee on pension policy regarding the fiscal and policy
19 impacts of this act. The joint committee shall solicit information
20 from the superintendent of public instruction, the department of
21 personnel, the office of financial management, the department of
22 retirement systems, and the health care authority regarding the program
23 impacts of this act and shall report to the legislative fiscal
24 committees no later than October 1, 2003, on any proposed changes or
25 improvements to this act. If the state actuary determines the
26 expansion of postretirement options under sections 3 and 4 of this act
27 has resulted in increased costs for the state retirement funds, the
28 joint committee report shall include a proposal for a process to charge
29 those employers who employ retirees pursuant to an extension of
30 sections 3 and 4 of this act for the costs incurred by the retirement
31 funds under the extension.

32 **Sec. 8.** RCW 41.32.802 and 1997 c 254 s 8 are each amended to read
33 as follows:

34 (1)(a) If a retiree enters employment with an employer sooner than
35 one calendar month after his or her accrual date, the retiree's monthly
36 retirement allowance will be reduced by five and one-half percent for

every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to (~~(five months)~~) eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as a fire fighter or law enforcement officer, as defined in RCW 41.26.030, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.32.044, he or she terminates his or her retirement status and immediately becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible.

Sec. 9. RCW 41.32.860 and 1997 c 254 s 7 are each amended to read as follows:

(1) Except under RCW 41.32.862, no retiree shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010 (~~(or)~~) 41.32.010, or 41.35.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused the suspension of benefits. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

Sec. 10. RCW 41.32.862 and 1997 c 254 s 9 are each amended to read as follows:

(1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be

1 applied each month until the retiree remains absent from employment
2 with an employer for one full calendar month.

3 (b) The benefit reduction provided in (a) of this subsection will
4 accrue for a maximum of one hundred forty hours per month. Any benefit
5 reduction over one hundred percent will be applied to the benefit the
6 retiree is eligible to receive in subsequent months.

7 (2) A retiree who has satisfied the break in employment requirement
8 of subsection (1) of this section, may work up to (~~(five months)~~) eight
9 hundred sixty-seven hours per calendar year in an eligible position, as
10 defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as a fire fighter
11 or law enforcement officer, as defined in RCW 41.26.030, without
12 suspension of his or her benefit.

13 (3) If the retiree opts to reestablish membership under RCW
14 41.32.044, he or she terminates his or her retirement status and
15 immediately becomes a member. Retirement benefits shall not accrue
16 during the period of membership and the individual shall make
17 contributions and receive membership credit. Such a member shall have
18 the right to again retire if eligible.

19 **Sec. 11.** RCW 41.35.060 and 1998 c 341 s 7 are each amended to read
20 as follows:

21 (1)(a) If a retiree enters employment with an employer sooner than
22 one calendar month after his or her accrual date, the retiree's monthly
23 retirement allowance will be reduced by five and one-half percent for
24 every eight hours worked during that month. This reduction will be
25 applied each month until the retiree remains absent from employment
26 with an employer for one full calendar month.

27 (b) The benefit reduction provided in (a) of this subsection will
28 accrue for a maximum of one hundred sixty hours per month. Any benefit
29 reduction over one hundred percent will be applied to the benefit the
30 retiree is eligible to receive in subsequent months.

31 (2) A retiree who has satisfied the break in employment requirement
32 of subsection (1) of this section may work up to (~~(five months)~~) eight
33 hundred sixty-seven hours per calendar year in an eligible position, as
34 defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as a fire fighter
35 or law enforcement officer, as defined in RCW 41.26.030, without
36 suspension of his or her benefit.

37 (3) If the retiree opts to reestablish membership under RCW
38 41.35.030, he or she terminates his or her retirement status and

1 becomes a member. Retirement benefits shall not accrue during the
2 period of membership and the individual shall make contributions and
3 receive membership credit. Such a member shall have the right to again
4 retire if eligible in accordance with RCW 41.35.420 or 41.35.680.
5 However, if the right to retire is exercised to become effective before
6 the member has rendered two uninterrupted years of service, the
7 retirement formula and survivor options the member had at the time of
8 the member's previous retirement shall be reinstated.

9 **Sec. 12.** RCW 41.40.037 and 1997 c 254 s 14 are each amended to
10 read as follows:

11 (1)(a) If a retiree enters employment with an employer sooner than
12 one calendar month after his or her accrual date, the retiree's monthly
13 retirement allowance will be reduced by five and one-half percent for
14 every eight hours worked during that month. This reduction will be
15 applied each month until the retiree remains absent from employment
16 with an employer for one full calendar month.

17 (b) The benefit reduction provided in (a) of this subsection will
18 accrue for a maximum of one hundred sixty hours per month. Any benefit
19 reduction over one hundred percent will be applied to the benefit the
20 retiree is eligible to receive in subsequent months.

21 (2) A retiree who has satisfied the break in employment requirement
22 of subsection (1) of this section, may work up to (~~(five months)~~) eight
23 hundred sixty-seven hours per calendar year in an eligible position, as
24 defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as a fire fighter
25 or law enforcement officer, as defined in RCW 41.26.030, without
26 suspension of his or her benefit.

27 (3) If the retiree opts to reestablish membership under RCW
28 41.40.023(12), he or she terminates his or her retirement status and
29 becomes a member. Retirement benefits shall not accrue during the
30 period of membership and the individual shall make contributions and
31 receive membership credit. Such a member shall have the right to again
32 retire if eligible in accordance with RCW 41.40.180. However, if the
33 right to retire is exercised to become effective before the member has
34 rendered two uninterrupted years of service, the retirement formula and
35 survivor options the member had at the time of the member's previous
36 retirement shall be reinstated.

Sec. 13. RCW 41.40.750 and 1998 c 341 s 113 are each amended to read as follows:

(1) Effective September 1, 2000, the membership of all plan 2 members currently employed in eligible positions in a school district or educational service district and all plan 2 service credit for such members, is transferred to the Washington school employees' retirement system plan 2. Plan 2 members who have withdrawn their member contributions for prior plan 2 service may restore contributions and service credit to the Washington school employees' retirement system plan 2 as provided under RCW 41.40.740.

(2)(a) The membership and previous service credit of a plan 2 member not employed in an eligible position on September 1, 2000, will be transferred to the Washington school employees' retirement system plan 2 when he or she becomes employed in an eligible position. Plan 2 members not employed in an eligible position on September 1, 2000, who have withdrawn their member contributions for prior plan 2 service may restore contributions and service credit to the Washington school employees' retirement system plan 2 as provided under RCW 41.40.740.

(b) The membership and previous service credit of a plan 2 member last employed by a school district or educational service district and retired prior to September 1, 2000, will be transferred to the Washington school employees' retirement system plan 2 if the member opts to reestablish membership.

(3) Members who restore contributions and service credit under subsection (1) or (2) of this section shall have their contributions and service credit transferred to the Washington school employees' retirement system.

NEW SECTION. Sec. 14. Except for section 12 of this act which takes effect December 31, 2004, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001.

Passed the Senate June 20, 2001.

Passed the House June 19, 2001.

Approved by the Governor June 26, 2001, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State June 26, 2001.

Note: Governor's explanation of partial veto is as follows:

1 "I am returning herewith, without my approval as to sections 5 and
2 6, Engrossed Substitute Senate Bill No. 5937 entitled:

3 "AN ACT Relating to postretirement employment for teachers'
4 retirement system, public employees' retirement system, and school
5 employees' retirement system retirees;"

6 This bill addresses worker retention problems in public employment
7 by expanding post-retirement employment opportunities for Plan 1
8 members of the teachers' and public employees' retirement systems.

9 The state is facing a critical shortage of experienced teachers and
10 other employees with skills that are in high demand. To meet this
11 shortage, we need to attract retirees back to work. ESSB 5937 will
12 help us in this task by creating a program for post-retirement
13 employment. To improve the effectiveness of this program and ensure a
14 steady supply of people with valuable expertise in our schools and
15 state and local agencies, I have vetoed sections 5 and 6, which would
16 have terminated the program in 2004. This sunset date would have been
17 premature and would not have allowed sufficient time for the program to
18 develop.

19 The bill contains provisions for a study of the program, and a
20 means to recover any resulting costs from employers. These provisions
21 provide adequate safeguards for the program and make sections 5 and 6
22 unnecessary.

23 For these reasons, I have vetoed sections 5 and 6 of Engrossed
24 Substitute Senate Bill No. 5937.

25 With the exception of sections 5 and 6, Engrossed Substitute Senate
26 Bill 5937 is approved."

Appendix F

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1829

Chapter 412, Laws of 2003

(partial veto)

58th Legislature
2003 Regular Session

POSTRETIREMENT EMPLOYMENT

EFFECTIVE DATE: 7/27/03

Passed by the House April 26, 2003
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 25, 2003
Yeas 38 Nays 11

BRAD OWEN

President of the Senate

Approved May 20, 2003, with the
exception of sections 1 and 2, which
are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of
the House of Representatives of
the State of Washington, do hereby
certify that the attached is
SUBSTITUTE HOUSE BILL 1829 as
passed by the House of
Representatives and the Senate on
the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 20, 2003 - 4:04 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1829

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session**By** House Committee on Appropriations (originally sponsored by Representatives Bailey, Sehlin, Talcott, Kristiansen, Clements, Tom, Pearson, McMahan, Benson, Woods and Pflug)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to postretirement employment in the public
2 employees' retirement system and the teachers' retirement system;
3 amending RCW 41.32.010, 41.32.570, 41.40.010, and 41.40.037; creating
4 a new section; repealing 2001 c 317 s 1; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1. RCW 41.32.010 and 1997 c 254 s 3 are each amended to read*
7 *as follows:*

8 *As used in this chapter, unless a different meaning is plainly*
9 *required by the context:*

10 *(1) (a) "Accumulated contributions" for plan 1 members, means the*
11 *sum of all regular annuity contributions and, except for the purpose of*
12 *withdrawal at the time of retirement, any amount paid under RCW*
13 *41.50.165(2) with regular interest thereon.*

14 *(b) "Accumulated contributions" for plan 2 members, means the sum*
15 *of all contributions standing to the credit of a member in the member's*
16 *individual account, including any amount paid under RCW 41.50.165(2),*
17 *together with the regular interest thereon.*

18 *(2) "Actuarial equivalent" means a benefit of equal value when*

1 computed upon the basis of such mortality tables and regulations as
2 shall be adopted by the director and regular interest.

3 (3) "Annuity" means the moneys payable per year during life by
4 reason of accumulated contributions of a member.

5 (4) "Member reserve" means the fund in which all of the accumulated
6 contributions of members are held.

7 (5)(a) "Beneficiary" for plan 1 members, means any person in
8 receipt of a retirement allowance or other benefit provided by this
9 chapter.

10 (b) "Beneficiary" for plan 2 and plan 3 members, means any person
11 in receipt of a retirement allowance or other benefit provided by this
12 chapter resulting from service rendered to an employer by another
13 person.

14 (6) "Contract" means any agreement for service and compensation
15 between a member and an employer.

16 (7) "Creditable service" means membership service plus prior
17 service for which credit is allowable. This subsection shall apply
18 only to plan 1 members.

19 (8) "Dependent" means receiving one-half or more of support from a
20 member.

21 (9) "Disability allowance" means monthly payments during
22 disability. This subsection shall apply only to plan 1 members.

23 (10)(a) "Earnable compensation" for plan 1 members, means:

24 (i) All salaries and wages paid by an employer to an employee
25 member of the retirement system for personal services rendered during
26 a fiscal year. In all cases where compensation includes maintenance
27 the employer shall fix the value of that part of the compensation not
28 paid in money.

29 (ii) "Earnable compensation" for plan 1 members also includes the
30 following actual or imputed payments, which are not paid for personal
31 services:

32 (A) Retroactive payments to an individual by an employer on
33 reinstatement of the employee in a position, or payments by an employer
34 to an individual in lieu of reinstatement in a position which are
35 awarded or granted as the equivalent of the salary or wages which the
36 individual would have earned during a payroll period shall be
37 considered earnable compensation and the individual shall receive the
38 equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iii) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(iv) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but

1 shall exclude lump sum payments for deferred annual sick leave, unused
2 accumulated vacation, unused accumulated annual leave, or any form of
3 severance pay.

4 "Earnable compensation" for plan 2 and plan 3 members also includes
5 the following actual or imputed payments which, except in the case of
6 (b)(ii)(B) of this subsection, are not paid for personal services:

7 (i) Retroactive payments to an individual by an employer on
8 reinstatement of the employee in a position or payments by an employer
9 to an individual in lieu of reinstatement in a position which are
10 awarded or granted as the equivalent of the salary or wages which the
11 individual would have earned during a payroll period shall be
12 considered earnable compensation, to the extent provided above, and the
13 individual shall receive the equivalent service credit.

14 (ii) In any year in which a member serves in the legislature the
15 member shall have the option of having such member's earnable
16 compensation be the greater of:

17 (A) The earnable compensation the member would have received had
18 such member not served in the legislature; or

19 (B) Such member's actual earnable compensation received for
20 teaching and legislative service combined. Any additional
21 contributions to the retirement system required because compensation
22 earnable under (b)(ii)(A) of this subsection is greater than
23 compensation earnable under (b)(ii)(B) of this subsection shall be paid
24 by the member for both member and employer contributions.

25 (11) "Employer" means the state of Washington, the school district,
26 or any agency of the state of Washington by which the member is paid.

27 (12) "Fiscal year" means a year which begins July 1st and ends June
28 30th of the following year.

29 (13) "Former state fund" means the state retirement fund in
30 operation for teachers under chapter 187, Laws of 1923, as amended.

31 (14) "Local fund" means any of the local retirement funds for
32 teachers operated in any school district in accordance with the
33 provisions of chapter 163, Laws of 1917 as amended.

34 (15) "Member" means any teacher included in the membership of the
35 retirement system. Also, any other employee of the public schools who,
36 on July 1, 1947, had not elected to be exempt from membership and who,
37 prior to that date, had by an authorized payroll deduction, contributed
38 to the member reserve.

(16) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan 1 members.

(17) "Pension" means the moneys payable per year during life from the pension reserve.

(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(19) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan 1 members.

(20) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan 1 members.

(21) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan 1 members.

(23) "Regular interest" means such rate as the director may determine.

(24) (a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

1 (26) (a) "Service" for plan 1 members means the time during which a
2 member has been employed by an employer for compensation.

3 (i) If a member is employed by two or more employers the individual
4 shall receive no more than one service credit month during any calendar
5 month in which multiple service is rendered.

6 (ii) As authorized by RCW 28A.400.300, up to forty-five days of
7 sick leave may be creditable as service solely for the purpose of
8 determining eligibility to retire under RCW 41.32.470.

9 (iii) As authorized in RCW 41.32.065, service earned in an out-of-
10 state retirement system that covers teachers in public schools may be
11 applied solely for the purpose of determining eligibility to retire
12 under RCW 41.32.470.

13 (b) "Service" for plan 2 and plan 3 members, means periods of
14 employment by a member for one or more employers for which earnable
15 compensation is earned subject to the following conditions:

16 (i) A member employed in an eligible position or as a substitute
17 shall receive one service credit month for each month of September
18 through August of the following year if he or she earns earnable
19 compensation for eight hundred ten or more hours during that period and
20 is employed during nine of those months, except that a member may not
21 receive credit for any period prior to the member's employment in an
22 eligible position except as provided in RCW 41.32.812 and 41.50.132;

23 (ii) If a member is employed either in an eligible position or as
24 a substitute teacher for nine months of the twelve month period between
25 September through August of the following year but earns earnable
26 compensation for less than eight hundred ten hours but for at least six
27 hundred thirty hours, he or she will receive one-half of a service
28 credit month for each month of the twelve month period;

29 (iii) All other members in an eligible position or as a substitute
30 teacher shall receive service credit as follows:

31 (A) A service credit month is earned in those calendar months where
32 earnable compensation is earned for ninety or more hours;

33 (B) A half-service credit month is earned in those calendar months
34 where earnable compensation is earned for at least seventy hours but
35 less than ninety hours; and

36 (C) A quarter-service credit month is earned in those calendar
37 months where earnable compensation is earned for less than seventy
38 hours.

(iv) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(v) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(vi) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(viii) The department shall adopt rules implementing this subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in

1 addition thereto any full time school doctor who is employed by a
2 public school and renders service of an instructional or educational
3 nature.

4 (30) "Average final compensation" for plan 2 and plan 3 members,
5 means the member's average earnable compensation of the highest
6 consecutive sixty service credit months prior to such member's
7 retirement, termination, or death. Periods constituting authorized
8 leaves of absence may not be used in the calculation of average final
9 compensation except under RCW 41.32.810(2).

10 (31) "Retiree" means any person who has begun accruing a retirement
11 allowance or other benefit provided by this chapter resulting from
12 service rendered to an employer while a member.

13 (32) "Department" means the department of retirement systems
14 created in chapter 41.50 RCW.

15 (33) "Director" means the director of the department.

16 (34) "State elective position" means any position held by any
17 person elected or appointed to statewide office or elected or appointed
18 as a member of the legislature.

19 (35) "State actuary" or "actuary" means the person appointed
20 pursuant to RCW 44.44.010(2).

21 (36) "Substitute teacher" means:

22 (a) A teacher who is hired by an employer to work as a temporary
23 teacher, except for teachers who are annual contract employees of an
24 employer and are guaranteed a minimum number of hours; or

25 (b) Teachers who either (i) work in ineligible positions for more
26 than one employer or (ii) work in an ineligible position or positions
27 together with an eligible position.

28 (37)(a) "Eligible position" for plan 2 members from June 7, 1990,
29 through September 1, 1991, means a position which normally requires two
30 or more uninterrupted months of creditable service during September
31 through August of the following year.

32 (b) "Eligible position" for plan 2 and plan 3 on and after
33 September 1, 1991, means a position that, as defined by the employer,
34 normally requires five or more months of at least seventy hours of
35 earnable compensation during September through August of the following
36 year.

37 (c) For purposes of this chapter an employer shall not define

"position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(38) "Plan 1" means the teachers' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan 2" means the teachers' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(40) "Plan 3" means the teachers' retirement system, plan 3 providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(41) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

(42) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(43) "Index B" means the index for the year prior to index A.

(44) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(45) "Adjustment ratio" means the value of index A divided by index B.

(46) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(47) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(48) "Separation from service or employment" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.32.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination.

1 (49) "Employed" or "employee" means a person who is providing
2 services for compensation to an employer, unless the person is free
3 from the employer's direction and control over the performance of work.
4 The department shall adopt rules and interpret this subsection
5 consistent with common law.

*Sec. 1 was vetoed. See message at end of chapter.

6 *Sec. 2. RCW 41.32.570 and 2001 2nd sp.s. c 10 s 3 are each amended
7 to read as follows:

8 (1)(a) If a retiree enters employment with an employer sooner than
9 one calendar month after his or her accrual date, the retiree's monthly
10 retirement allowance will be reduced by five and one-half percent for
11 every seven hours worked during that month. This reduction will be
12 applied each month until the retiree remains absent from employment
13 with an employer for one full calendar month.

14 (b) The benefit reduction provided in (a) of this subsection will
15 accrue for a maximum of one hundred forty hours per month. Any monthly
16 benefit reduction over one hundred percent will be applied to the
17 benefit the retiree is eligible to receive in subsequent months.

18 (2) Except as provided in subsection (3) of this section, any
19 retired teacher or retired administrator who enters service in any
20 public educational institution in Washington state (~~(and who has~~
21 ~~satisfied the break in employment requirement of subsection (1) of this~~
22 ~~section))~~ at least one calendar month after his or her accrual date
23 shall cease to receive pension payments while engaged in such service,
24 after the retiree has rendered service for more than (~~(one thousand~~
25 ~~five hundred))~~ eight hundred sixty-seven hours in a school year.

26 (3) Any retired teacher or retired administrator who enters service
27 in any public educational institution in Washington state one and one-
28 half calendar months or more after his or her accrual date and:

29 (a) Is hired into a position for which the school board has
30 documented a justifiable need to hire a retiree into the position;

31 (b) Is hired through the established process for the position with
32 the approval of the school board of the prospective employer;

33 (c) The employer retains records of the procedures followed and the
34 decisions made in hiring the retired teacher or retired administrator
35 and provides those records in the event of an audit; and

36 (d) The employee has not already rendered a cumulative total of
37 more than (i) three thousand one hundred sixty-five hours of service as

a teacher or principal, or (ii) one thousand nine hundred hours in any other capacity, while receiving pension payments, beyond an annual threshold of eight hundred sixty-seven hours; shall cease to receive pension payments while engaged in that service after the retiree has rendered service for more than one thousand five hundred hours in a school year. The cumulative total limitations under this subsection apply prospectively to those retiring after the effective date of this act and retroactively to those who retired prior to the effective date of this act, and shall be calculated from the date of retirement.

(4) When a retired teacher or administrator renders service beyond eight hundred sixty-seven hours, the department shall collect from the employer the applicable employer retirement contributions for the entire duration of the member's employment during that fiscal year.

~~((3))~~ (5) The department shall collect and provide the state actuary with information relevant to the use of this section for the joint committee on pension policy.

~~((4))~~ (6) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than ((five hundred twenty-five)) eight hundred sixty-seven hours per year without a reduction of his or her pension.

**Sec. 2 was vetoed. See message at end of chapter.*

NEW SECTION. **Sec. 3.** 2001 c 317 s 1 is repealed.

Sec. 4. RCW 41.40.010 and 2000 c 247 s 102 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the public employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for plan 1 members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the

1 state admitted into the retirement system, and legal entities
2 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the
3 term shall also include any labor guild, association, or organization
4 the membership of a local lodge or division of which is comprised of at
5 least forty percent employees of an employer (other than such labor
6 guild, association, or organization) within this chapter. The term may
7 also include any city of the first class that has its own retirement
8 system.

9 (b) "Employer" for plan 2 and plan 3 members, means every branch,
10 department, agency, commission, board, and office of the state, and any
11 political subdivision and municipal corporation of the state admitted
12 into the retirement system, including public agencies created pursuant
13 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August
14 31, 2000, school districts and educational service districts will no
15 longer be employers for the public employees' retirement system plan 2.

16 (5) "Member" means any employee included in the membership of the
17 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045
18 does not prohibit a person otherwise eligible for membership in the
19 retirement system from establishing such membership effective when he
20 or she first entered an eligible position.

21 (6) "Original member" of this retirement system means:

22 (a) Any person who became a member of the system prior to April 1,
23 1949;

24 (b) Any person who becomes a member through the admission of an
25 employer into the retirement system on and after April 1, 1949, and
26 prior to April 1, 1951;

27 (c) Any person who first becomes a member by securing employment
28 with an employer prior to April 1, 1951, provided the member has
29 rendered at least one or more years of service to any employer prior to
30 October 1, 1947;

31 (d) Any person who first becomes a member through the admission of
32 an employer into the retirement system on or after April 1, 1951,
33 provided, such person has been in the regular employ of the employer
34 for at least six months of the twelve-month period preceding the said
35 admission date;

36 (e) Any member who has restored all contributions that may have
37 been withdrawn as provided by RCW 41.40.150 and who on the effective
38 date of the individual's retirement becomes entitled to be credited

with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(7) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(8)(a) "Compensation earnable" for plan 1 members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer.

(i) "Compensation earnable" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9)(a) "Service" for plan 1 members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

(i) Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the Washington school employees' retirement system, teachers' retirement system, or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the Washington school employees' retirement system, teachers' retirement system, or law enforcement officers' and fire fighters' retirement system.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

1 (b) All service after October 1, 1947, to any employer prior to the
2 time of its admission into the retirement system for which member and
3 employer contributions, plus interest as required by RCW 41.50.125,
4 have been paid under RCW 41.40.056 or 41.40.057;

5 (c) Service not to exceed six consecutive months of probationary
6 service rendered after April 1, 1949, and prior to becoming a member,
7 in the case of any member, upon payment in full by such member of the
8 total amount of the employer's contribution to the retirement fund
9 which would have been required under the law in effect when such
10 probationary service was rendered if the member had been a member
11 during such period, except that the amount of the employer's
12 contribution shall be calculated by the director based on the first
13 month's compensation earnable as a member;

14 (d) Service not to exceed six consecutive months of probationary
15 service, rendered after October 1, 1947, and before April 1, 1949, and
16 prior to becoming a member, in the case of any member, upon payment in
17 full by such member of five percent of such member's salary during said
18 period of probationary service, except that the amount of the
19 employer's contribution shall be calculated by the director based on
20 the first month's compensation earnable as a member.

21 (14)(a) "Beneficiary" for plan 1 members, means any person in
22 receipt of a retirement allowance, pension or other benefit provided by
23 this chapter.

24 (b) "Beneficiary" for plan 2 and plan 3 members, means any person
25 in receipt of a retirement allowance or other benefit provided by this
26 chapter resulting from service rendered to an employer by another
27 person.

28 (15) "Regular interest" means such rate as the director may
29 determine.

30 (16) "Accumulated contributions" means the sum of all contributions
31 standing to the credit of a member in the member's individual account,
32 including any amount paid under RCW 41.50.165(2), together with the
33 regular interest thereon.

34 (17)(a) "Average final compensation" for plan 1 members, means the
35 annual average of the greatest compensation earnable by a member during
36 any consecutive two year period of service credit months for which
37 service credit is allowed; or if the member has less than two years of

1 service credit months then the annual average compensation earnable
2 during the total years of service for which service credit is allowed.

3 (b) "Average final compensation" for plan 2 and plan 3 members,
4 means the member's average compensation earnable of the highest
5 consecutive sixty months of service credit months prior to such
6 member's retirement, termination, or death. Periods constituting
7 authorized leaves of absence may not be used in the calculation of
8 average final compensation except under RCW 41.40.710(2).

9 (18) "Final compensation" means the annual rate of compensation
10 earnable by a member at the time of termination of employment.

11 (19) "Annuity" means payments for life derived from accumulated
12 contributions of a member. All annuities shall be paid in monthly
13 installments.

14 (20) "Pension" means payments for life derived from contributions
15 made by the employer. All pensions shall be paid in monthly
16 installments.

17 (21) "Retirement allowance" means the sum of the annuity and the
18 pension.

19 (22) "Employee" or "employed" means a person who is providing
20 services for compensation to an employer, unless the person is free
21 from the employer's direction and control over the performance of work.
22 The department shall adopt rules and interpret this subsection
23 consistent with common law.

24 (23) "Actuarial equivalent" means a benefit of equal value when
25 computed upon the basis of such mortality and other tables as may be
26 adopted by the director.

27 (24) "Retirement" means withdrawal from active service with a
28 retirement allowance as provided by this chapter.

29 (25) "Eligible position" means:

30 (a) Any position that, as defined by the employer, normally
31 requires five or more months of service a year for which regular
32 compensation for at least seventy hours is earned by the occupant
33 thereof. For purposes of this chapter an employer shall not define
34 "position" in such a manner that an employee's monthly work for that
35 employer is divided into more than one position;

36 (b) Any position occupied by an elected official or person
37 appointed directly by the governor, or appointed by the chief justice

1 of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which
2 compensation is paid.

3 (26) "Ineligible position" means any position which does not
4 conform with the requirements set forth in subsection (25) of this
5 section.

6 (27) "Leave of absence" means the period of time a member is
7 authorized by the employer to be absent from service without being
8 separated from membership.

9 (28) "Totally incapacitated for duty" means total inability to
10 perform the duties of a member's employment or office or any other work
11 for which the member is qualified by training or experience.

12 (29) "Retiree" means any person who has begun accruing a retirement
13 allowance or other benefit provided by this chapter resulting from
14 service rendered to an employer while a member.

15 (30) "Director" means the director of the department.

16 (31) "State elective position" means any position held by any
17 person elected or appointed to statewide office or elected or appointed
18 as a member of the legislature.

19 (32) "State actuary" or "actuary" means the person appointed
20 pursuant to RCW 44.44.010(2).

21 (33) "Plan 1" means the public employees' retirement system, plan
22 1 providing the benefits and funding provisions covering persons who
23 first became members of the system prior to October 1, 1977.

24 (34) "Plan 2" means the public employees' retirement system, plan
25 2 providing the benefits and funding provisions covering persons who
26 first became members of the system on and after October 1, 1977, and
27 are not included in plan 3.

28 (35) "Plan 3" means the public employees' retirement system, plan
29 3 providing the benefits and funding provisions covering persons who:

30 (a) First become a member on or after:

31 (i) March 1, 2002, and are employed by a state agency or institute
32 of higher education and who did not choose to enter plan 2; or

33 (ii) September 1, 2002, and are employed by other than a state
34 agency or institute of higher education and who did not choose to enter
35 plan 2; or

36 (b) Transferred to plan 3 under RCW 41.40.795.

37 (36) "Index" means, for any calendar year, that year's annual

average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(37) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(38) "Index B" means the index for the year prior to index A.

(39) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(40) "Adjustment ratio" means the value of index A divided by index B.

(41) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(42) "Separation from service" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination.

(43) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

Sec. 5. RCW 41.40.037 and 2001 2nd sp.s. c 10 s 4 are each amended to read as follows:

(1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2)(a) Except as provided in (b) of this subsection, a retiree from plan 1 who ((has satisfied the break in employment requirement of subsection (1) of this section and who)) enters employment with an

1 employer at least one calendar month after his or her accrual date may
2 continue to receive pension payments while engaged in such service for
3 up to (~~one thousand five hundred~~) eight hundred sixty-seven hours of
4 service in a calendar year without a reduction of pension.

5 (b) A retiree from plan 1 who enters employment with an employer at
6 least three calendar months after his or her accrual date and:

7 (i) Is hired into a position for which the employer has documented
8 a justifiable need to hire a retiree into the position;

9 (ii) Is hired through the established process for the position with
10 the approval of: A school board for a school district; the chief
11 executive officer of a state agency employer; the secretary of the
12 senate for the senate; the chief clerk of the house of representatives
13 for the house of representatives; the secretary of the senate and the
14 chief clerk of the house of representatives jointly for the joint
15 legislative audit and review committee, the legislative transportation
16 committee, the joint committee on pension policy, the legislative
17 evaluation and accountability program, the legislative systems
18 committee, and the statute law committee; or according to rules adopted
19 for the rehiring of retired plan 1 members for a local government
20 employer;

21 (iii) The employer retains records of the procedures followed and
22 decisions made in hiring the retiree, and provides those records in the
23 event of an audit; and

24 (iv) The employee has not already rendered a cumulative total of
25 more than one thousand nine hundred hours of service while in receipt
26 of pension payments beyond an annual threshold of eight hundred sixty-
27 seven hours;

28 shall cease to receive pension payments while engaged in that service
29 after the retiree has rendered service for more than one thousand five
30 hundred hours in a calendar year. The one thousand nine hundred hour
31 cumulative total under this subsection applies prospectively to those
32 retiring after the effective date of this act and retroactively to
33 those who retired prior to the effective date of this act, and shall be
34 calculated from the date of retirement.

35 (c) When a plan 1 member renders service beyond eight hundred
36 sixty-seven hours, the department shall collect from the employer the
37 applicable employer retirement contributions for the entire duration of
38 the member's employment during that calendar year.

1 (~~(b)~~) (d) A retiree from plan 2 or plan 3 who has satisfied the
2 break in employment requirement of subsection (1) of this section may
3 work up to eight hundred sixty-seven hours in a calendar year in an
4 eligible position, as defined in RCW 41.32.010, 41.35.010, or
5 41.40.010, or as a fire fighter or law enforcement officer, as defined
6 in RCW 41.26.030, without suspension of his or her benefit.

7 (3) If the retiree opts to reestablish membership under RCW
8 41.40.023(12), he or she terminates his or her retirement status and
9 becomes a member. Retirement benefits shall not accrue during the
10 period of membership and the individual shall make contributions and
11 receive membership credit. Such a member shall have the right to again
12 retire if eligible in accordance with RCW 41.40.180. However, if the
13 right to retire is exercised to become effective before the member has
14 rendered two uninterrupted years of service, the retirement formula and
15 survivor options the member had at the time of the member's previous
16 retirement shall be reinstated.

17 (4) The department shall collect and provide the state actuary with
18 information relevant to the use of this section for the joint committee
19 on pension policy.

20 (5) The legislature reserves the right to amend or repeal this
21 section in the future and no member or beneficiary has a contractual
22 right to be employed for more than five months in a calendar year
23 without a reduction of his or her pension.

24 NEW SECTION. **Sec. 6.** The department of retirement systems shall,
25 in consultation with the employment security department, prepare a
26 notice to employers to be included in the established process of
27 informing employers of changes in the retirement systems. This notice
28 will inform employers about the possible unemployment compensation
29 consequences of hiring retirees.

 Passed by the House April 26, 2003.

 Passed by the Senate April 25, 2003.

 Approved by the Governor May 20, 2003, with the exception of
 certain items that were vetoed.

 Filed in Office of Secretary of State May 20, 2003.

 Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1 and 2,
Substitute House Bill No. 1829 entitled:

"AN ACT Relating to postretirement employment in the public
employees' retirement system and the teachers' retirement system;"

This bill would impose new standards and procedures for rehiring members of the Teachers Retirement System and the Public Employees Retirement System who have retired from public employment.

I initially proposed the retire-rehire legislation in 2001 to address the shortage of qualified teachers and school administrators. Prior to this law, the Teachers Retirement System penalized experienced teachers by limiting them to 30 years of retirement service credit, even if they taught longer than that.

Section 1 would make it a felony for a member of the Teachers Retirement System to enter into an oral or written agreement to resume employment after retirement. While I appreciate the intent of the Legislature to prohibit employees and employers from entering into private handshake deals, the penalty in this section is significantly more severe than the penalty for similar acts committed by members of the Public Employees Retirement System. Therefore, I am vetoing section 1.

Section 2 would provide new standards and procedures for the future employment of retirees within the public school system. I strongly support those accountability provisions. However, section 2 would also place an artificial "lifetime limit" on the number of hours that a retired member of the system could work after being rehired, and would make that limit retroactive. The retroactive lifetime limit will place an unreasonable recruitment burden on school districts facing significant shortages of qualified teachers and principals. We must protect the ability of school districts to provide for the education of our children, and trust their locally elected school boards to properly administer the retire-rehire law. Therefore, I am vetoing section 2.

While I am not vetoing Section 4, which would make it a gross misdemeanor for a member of the Public Employees Retirement System to enter into an oral or written agreement to resume employment after retirement, I am concerned that the language of the section is flawed and therefore almost impossible to prosecute under. I believe the Legislature should consider legislation to perfect the language to make the elements of the crime clear and to place the language into RCW 41.40.055, which is the section dealing with pension fraud for this retirement system.

For these reasons, I have vetoed sections 1 and 2 of Substitute House Bill No. 1829.

With the exception of sections 1 and 2, Substitute House Bill No. 1829 is approved."



Appendix G

H-2031.1

SUBSTITUTE HOUSE BILL 1326

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Conway, Crouse, Simpson and Chase; by request of Select Committee on Pension Policy)

READ FIRST TIME 02/23/05.

1 AN ACT Relating to the public employment of retirees from the
2 teachers' retirement system and the public employees' retirement
3 system; amending RCW 41.32.010, 41.32.055, 41.32.570, 41.40.010,
4 41.40.010, and 41.40.037; reenacting and amending RCW 41.40.037;
5 prescribing penalties; providing effective dates; and providing an
6 expiration date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 41.32.010 and 2003 c 31 s 1 are each amended to read
9 as follows:

10 As used in this chapter, unless a different meaning is plainly
11 required by the context:

12 (1)(a) "Accumulated contributions" for plan 1 members, means the
13 sum of all regular annuity contributions and, except for the purpose of
14 withdrawal at the time of retirement, any amount paid under RCW
15 41.50.165(2) with regular interest thereon.

16 (b) "Accumulated contributions" for plan 2 members, means the sum
17 of all contributions standing to the credit of a member in the member's
18 individual account, including any amount paid under RCW 41.50.165(2),
19 together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6) "Contract" means any agreement for service and compensation between a member and an employer.

(7) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan 1 members.

(8) "Dependent" means receiving one-half or more of support from a member.

(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan 1 members.

(10)(a) "Earnable compensation" for plan 1 members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

1 (A) Retroactive payments to an individual by an employer on
2 reinstatement of the employee in a position, or payments by an employer
3 to an individual in lieu of reinstatement in a position which are
4 awarded or granted as the equivalent of the salary or wages which the
5 individual would have earned during a payroll period shall be
6 considered earnable compensation and the individual shall receive the
7 equivalent service credit.

8 (B) If a leave of absence, without pay, is taken by a member for
9 the purpose of serving as a member of the state legislature, and such
10 member has served in the legislature five or more years, the salary
11 which would have been received for the position from which the leave of
12 absence was taken shall be considered as compensation earnable if the
13 employee's contribution thereon is paid by the employee. In addition,
14 where a member has been a member of the state legislature for five or
15 more years, earnable compensation for the member's two highest
16 compensated consecutive years of service shall include a sum not to
17 exceed thirty-six hundred dollars for each of such two consecutive
18 years, regardless of whether or not legislative service was rendered
19 during those two years.

20 (iv) For members employed less than full time under written
21 contract with a school district, or community college district, in an
22 instructional position, for which the member receives service credit of
23 less than one year in all of the years used to determine the earnable
24 compensation used for computing benefits due under RCW 41.32.497,
25 41.32.498, and 41.32.520, the member may elect to have earnable
26 compensation defined as provided in RCW 41.32.345. For the purposes of
27 this subsection, the term "instructional position" means a position in
28 which more than seventy-five percent of the member's time is spent as
29 a classroom instructor (including office hours), a librarian, or a
30 counselor. Earnable compensation shall be so defined only for the
31 purpose of the calculation of retirement benefits and only as necessary
32 to insure that members who receive fractional service credit under RCW
33 41.32.270 receive benefits proportional to those received by members
34 who have received full-time service credit.

35 (v) "Earnable compensation" does not include:

36 (A) Remuneration for unused sick leave authorized under RCW
37 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(13) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

1 (14) "Local fund" means any of the local retirement funds for
2 teachers operated in any school district in accordance with the
3 provisions of chapter 163, Laws of 1917 as amended.

4 (15) "Member" means any teacher included in the membership of the
5 retirement system. Also, any other employee of the public schools who,
6 on July 1, 1947, had not elected to be exempt from membership and who,
7 prior to that date, had by an authorized payroll deduction, contributed
8 to the member reserve.

9 (16) "Membership service" means service rendered subsequent to the
10 first day of eligibility of a person to membership in the retirement
11 system: PROVIDED, That where a member is employed by two or more
12 employers the individual shall receive no more than one service credit
13 month during any calendar month in which multiple service is rendered.
14 The provisions of this subsection shall apply only to plan 1 members.

15 (17) "Pension" means the moneys payable per year during life from
16 the pension reserve.

17 (18) "Pension reserve" is a fund in which shall be accumulated an
18 actuarial reserve adequate to meet present and future pension
19 liabilities of the system and from which all pension obligations are to
20 be paid.

21 (19) "Prior service" means service rendered prior to the first date
22 of eligibility to membership in the retirement system for which credit
23 is allowable. The provisions of this subsection shall apply only to
24 plan 1 members.

25 (20) "Prior service contributions" means contributions made by a
26 member to secure credit for prior service. The provisions of this
27 subsection shall apply only to plan 1 members.

28 (21) "Public school" means any institution or activity operated by
29 the state of Washington or any instrumentality or political subdivision
30 thereof employing teachers, except the University of Washington and
31 Washington State University.

32 (22) "Regular contributions" means the amounts required to be
33 deducted from the compensation of a member and credited to the member's
34 individual account in the member reserve. This subsection shall apply
35 only to plan 1 members.

36 (23) "Regular interest" means such rate as the director may
37 determine.

(24)(a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

(26)(a) "Service" for plan 1 members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;

(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:

1 (A) A service credit month is earned in those calendar months where
2 earnable compensation is earned for ninety or more hours;

3 (B) A half-service credit month is earned in those calendar months
4 where earnable compensation is earned for at least seventy hours but
5 less than ninety hours; and

6 (C) A quarter-service credit month is earned in those calendar
7 months where earnable compensation is earned for less than seventy
8 hours.

9 (iv) Any person who is a member of the teachers' retirement system
10 and who is elected or appointed to a state elective position may
11 continue to be a member of the retirement system and continue to
12 receive a service credit month for each of the months in a state
13 elective position by making the required member contributions.

14 (v) When an individual is employed by two or more employers the
15 individual shall only receive one month's service credit during any
16 calendar month in which multiple service for ninety or more hours is
17 rendered.

18 (vi) As authorized by RCW 28A.400.300, up to forty-five days of
19 sick leave may be creditable as service solely for the purpose of
20 determining eligibility to retire under RCW 41.32.470. For purposes of
21 plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal
22 to two service credit months. Use of less than forty-five days of sick
23 leave is creditable as allowed under this subsection as follows:

24 (A) Less than eleven days equals one-quarter service credit month;

25 (B) Eleven or more days but less than twenty-two days equals one-
26 half service credit month;

27 (C) Twenty-two days equals one service credit month;

28 (D) More than twenty-two days but less than thirty-three days
29 equals one and one-quarter service credit month;

30 (E) Thirty-three or more days but less than forty-five days equals
31 one and one-half service credit month.

32 (vii) As authorized in RCW 41.32.065, service earned in an out-of-
33 state retirement system that covers teachers in public schools may be
34 applied solely for the purpose of determining eligibility to retire
35 under RCW 41.32.470.

36 (viii) The department shall adopt rules implementing this
37 subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(30) "Average final compensation" for plan 2 and plan 3 members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(31) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(37) (a) "Eligible position" for plan 2 members from June 7, 1990,

1 through September 1, 1991, means a position which normally requires two
2 or more uninterrupted months of creditable service during September
3 through August of the following year.

4 (b) "Eligible position" for plan 2 and plan 3 on and after
5 September 1, 1991, means a position that, as defined by the employer,
6 normally requires five or more months of at least seventy hours of
7 earnable compensation during September through August of the following
8 year.

9 (c) For purposes of this chapter an employer shall not define
10 "position" in such a manner that an employee's monthly work for that
11 employer is divided into more than one position.

12 (d) The elected position of the superintendent of public
13 instruction is an eligible position.

14 (38) "Plan 1" means the teachers' retirement system, plan 1
15 providing the benefits and funding provisions covering persons who
16 first became members of the system prior to October 1, 1977.

17 (39) "Plan 2" means the teachers' retirement system, plan 2
18 providing the benefits and funding provisions covering persons who
19 first became members of the system on and after October 1, 1977, and
20 prior to July 1, 1996.

21 (40) "Plan 3" means the teachers' retirement system, plan 3
22 providing the benefits and funding provisions covering persons who
23 first become members of the system on and after July 1, 1996, or who
24 transfer under RCW 41.32.817.

25 (41) "Index" means, for any calendar year, that year's annual
26 average consumer price index, Seattle, Washington area, for urban wage
27 earners and clerical workers, all items compiled by the bureau of labor
28 statistics, United States department of labor.

29 (42) "Index A" means the index for the year prior to the
30 determination of a postretirement adjustment.

31 (43) "Index B" means the index for the year prior to index A.

32 (44) "Index year" means the earliest calendar year in which the
33 index is more than sixty percent of index A.

34 (45) "Adjustment ratio" means the value of index A divided by index
35 B.

36 (46) "Annual increase" means, initially, fifty-nine cents per month
37 per year of service which amount shall be increased each July 1st by
38 three percent, rounded to the nearest cent.

(47) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(48) "Separation from service or employment" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.32.055, when an employer and employee have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this subsection.

(49) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

Sec. 2. RCW 41.32.055 and 2003 c 53 s 218 are each amended to read as follows:

(1) Any person who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system, except under subsection (2) of this section, in any attempt to defraud such system as a result of such act, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Any person who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement systems related to a member's separation from service and qualification for a retirement allowance under RCW 41.32.480 in any attempt to defraud such system as a result of such act, is guilty of a gross misdemeanor.

Sec. 3. RCW 41.32.570 and 2003 c 295 s 6 are each amended to read as follows:

(1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for

every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any monthly benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) Except under subsection (3) of this section, any retired teacher or retired administrator who enters service in any public educational institution in Washington state ((and who has satisfied the break in employment requirement of subsection (1) of this section)) at least one calendar month after his or her accrual date shall cease to receive pension payments while engaged in such service, after the retiree has rendered service for more than ((one thousand five hundred)) eight hundred sixty-seven hours in a school year.

(3) Any retired teacher or retired administrator who enters service in any public educational institution in Washington state one and one-half calendar months or more after his or her accrual date and:

(a) Is hired pursuant to a written policy into a position for which the school board has documented a justifiable need to hire a retiree into the position;

(b) Is hired through the established process for the position with the approval of the school board or other highest decision-making authority of the prospective employer;

(c) The employer retains records of the procedures followed and the decisions made in hiring the retired teacher or retired administrator and provides those records in the event of an audit; and

(d) The employee has not already rendered a cumulative total of more than one thousand nine hundred hours of service while receiving pension payments beyond an annual threshold of eight hundred sixty-seven hours;

shall cease to receive pension payments while engaged in that service after the retiree has rendered service for more than one thousand five hundred hours in a school year. The cumulative total limitations under this subsection apply prospectively after the effective date of this act.

(4) When a retired teacher or administrator renders service beyond

1 eight hundred sixty-seven hours, the department shall collect from the
2 employer the applicable employer retirement contributions for the
3 entire duration of the member's employment during that fiscal year.

4 ~~((3))~~ (5) The department shall collect and provide the state
5 actuary with information relevant to the use of this section for the
6 select committee on pension policy.

7 ~~((4))~~ (6) The legislature reserves the right to amend or repeal
8 this section in the future and no member or beneficiary has a
9 contractual right to be employed for more than ~~((five hundred twenty-~~
10 ~~five))~~ eight hundred sixty-seven hours per year without a reduction of
11 his or her pension.

12 **Sec. 4.** RCW 41.40.010 and 2003 c 412 s 4 are each amended to read
13 as follows:

14 As used in this chapter, unless a different meaning is plainly
15 required by the context:

16 (1) "Retirement system" means the public employees' retirement
17 system provided for in this chapter.

18 (2) "Department" means the department of retirement systems created
19 in chapter 41.50 RCW.

20 (3) "State treasurer" means the treasurer of the state of
21 Washington.

22 (4)(a) "Employer" for plan 1 members, means every branch,
23 department, agency, commission, board, and office of the state, any
24 political subdivision or association of political subdivisions of the
25 state admitted into the retirement system, and legal entities
26 authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the
27 term shall also include any labor guild, association, or organization
28 the membership of a local lodge or division of which is comprised of at
29 least forty percent employees of an employer (other than such labor
30 guild, association, or organization) within this chapter. The term may
31 also include any city of the first class that has its own retirement
32 system.

33 (b) "Employer" for plan 2 and plan 3 members, means every branch,
34 department, agency, commission, board, and office of the state, and any
35 political subdivision and municipal corporation of the state admitted
36 into the retirement system, including public agencies created pursuant

1 to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August
2 31, 2000, school districts and educational service districts will no
3 longer be employers for the public employees' retirement system plan 2.

4 (5) "Member" means any employee included in the membership of the
5 retirement system, as provided for in RCW 41.40.023. RCW 41.26.045
6 does not prohibit a person otherwise eligible for membership in the
7 retirement system from establishing such membership effective when he
8 or she first entered an eligible position.

9 (6) "Original member" of this retirement system means:

10 (a) Any person who became a member of the system prior to April 1,
11 1949;

12 (b) Any person who becomes a member through the admission of an
13 employer into the retirement system on and after April 1, 1949, and
14 prior to April 1, 1951;

15 (c) Any person who first becomes a member by securing employment
16 with an employer prior to April 1, 1951, provided the member has
17 rendered at least one or more years of service to any employer prior to
18 October 1, 1947;

19 (d) Any person who first becomes a member through the admission of
20 an employer into the retirement system on or after April 1, 1951,
21 provided, such person has been in the regular employ of the employer
22 for at least six months of the twelve-month period preceding the said
23 admission date;

24 (e) Any member who has restored all contributions that may have
25 been withdrawn as provided by RCW 41.40.150 and who on the effective
26 date of the individual's retirement becomes entitled to be credited
27 with ten years or more of membership service except that the provisions
28 relating to the minimum amount of retirement allowance for the member
29 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
30 apply to the member;

31 (f) Any member who has been a contributor under the system for two
32 or more years and who has restored all contributions that may have been
33 withdrawn as provided by RCW 41.40.150 and who on the effective date of
34 the individual's retirement has rendered five or more years of service
35 for the state or any political subdivision prior to the time of the
36 admission of the employer into the system; except that the provisions
37 relating to the minimum amount of retirement allowance for the member

1 upon retirement at age seventy as found in RCW 41.40.190(4) shall not
2 apply to the member.

3 (7) "New member" means a person who becomes a member on or after
4 April 1, 1949, except as otherwise provided in this section.

5 (8)(a) "Compensation earnable" for plan 1 members, means salaries
6 or wages earned during a payroll period for personal services and where
7 the compensation is not all paid in money, maintenance compensation
8 shall be included upon the basis of the schedules established by the
9 member's employer.

10 (i) "Compensation earnable" for plan 1 members also includes the
11 following actual or imputed payments, which are not paid for personal
12 services:

13 (A) Retroactive payments to an individual by an employer on
14 reinstatement of the employee in a position, or payments by an employer
15 to an individual in lieu of reinstatement in a position which are
16 awarded or granted as the equivalent of the salary or wage which the
17 individual would have earned during a payroll period shall be
18 considered compensation earnable and the individual shall receive the
19 equivalent service credit;

20 (B) If a leave of absence is taken by an individual for the purpose
21 of serving in the state legislature, the salary which would have been
22 received for the position from which the leave of absence was taken,
23 shall be considered as compensation earnable if the employee's
24 contribution is paid by the employee and the employer's contribution is
25 paid by the employer or employee;

26 (C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and
27 72.09.240;

28 (D) Compensation that a member would have received but for a
29 disability occurring in the line of duty only as authorized by RCW
30 41.40.038;

31 (E) Compensation that a member receives due to participation in the
32 leave sharing program only as authorized by RCW 41.04.650 through
33 41.04.670; and

34 (F) Compensation that a member receives for being in standby
35 status. For the purposes of this section, a member is in standby
36 status when not being paid for time actually worked and the employer
37 requires the member to be prepared to report immediately for work, if
38 the need arises, although the need may not arise.

(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a

1 disability occurring in the line of duty only as authorized by RCW
2 41.40.038;

3 (v) Compensation that a member receives due to participation in the
4 leave sharing program only as authorized by RCW 41.04.650 through
5 41.04.670; and

6 (vi) Compensation that a member receives for being in standby
7 status. For the purposes of this section, a member is in standby
8 status when not being paid for time actually worked and the employer
9 requires the member to be prepared to report immediately for work, if
10 the need arises, although the need may not arise.

11 (9)(a) "Service" for plan 1 members, except as provided in RCW
12 41.40.088, means periods of employment in an eligible position or
13 positions for one or more employers rendered to any employer for which
14 compensation is paid, and includes time spent in office as an elected
15 or appointed official of an employer. Compensation earnable earned in
16 full time work for seventy hours or more in any given calendar month
17 shall constitute one service credit month except as provided in RCW
18 41.40.088. Compensation earnable earned for less than seventy hours in
19 any calendar month shall constitute one-quarter service credit month of
20 service except as provided in RCW 41.40.088. Only service credit
21 months and one-quarter service credit months shall be counted in the
22 computation of any retirement allowance or other benefit provided for
23 in this chapter. Any fraction of a year of service shall be taken into
24 account in the computation of such retirement allowance or benefits.
25 Time spent in standby status, whether compensated or not, is not
26 service.

27 (i) Service by a state employee officially assigned by the state on
28 a temporary basis to assist another public agency, shall be considered
29 as service as a state employee: PROVIDED, That service to any other
30 public agency shall not be considered service as a state employee if
31 such service has been used to establish benefits in any other public
32 retirement system.

33 (ii) An individual shall receive no more than a total of twelve
34 service credit months of service during any calendar year. If an
35 individual is employed in an eligible position by one or more employers
36 the individual shall receive no more than one service credit month
37 during any calendar month in which multiple service for seventy or more
38 hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the Washington school employees' retirement system, teachers' retirement system, or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the Washington school employees' retirement system, teachers' retirement system, or law enforcement officers' and fire fighters' retirement system.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the

individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(14)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(15) "Regular interest" means such rate as the director may determine.

(16) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(17)(a) "Average final compensation" for plan 1 members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan 2 and plan 3 members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(19) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(21) "Retirement allowance" means the sum of the annuity and the pension.

(22) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(23) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(25) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor, or appointed by the chief justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which compensation is paid.

(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.

(27) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(28) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

(29) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(30) "Director" means the director of the department.

(31) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "Plan 1" means the public employees' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(34) "Plan 2" means the public employees' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and are not included in plan 3.

(35) "Plan 3" means the public employees' retirement system, plan 3 providing the benefits and funding provisions covering persons who:

(a) First become a member on or after:

(i) March 1, 2002, and are employed by a state agency or institute of higher education and who did not choose to enter plan 2; or

(ii) September 1, 2002, and are employed by other than a state agency or institute of higher education and who did not choose to enter plan 2; or

(b) Transferred to plan 3 under RCW 41.40.795.

(36) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(37) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(38) "Index B" means the index for the year prior to index A.

(39) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(40) "Adjustment ratio" means the value of index A divided by index B.

(41) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(42) "Separation from service" occurs when a person has terminated all employment with an employer. Separation from service or employment

does not occur, and if claimed by an employer or employee may be a violation of RCW 41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this subsection.

(43) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

Sec. 5. RCW 41.40.010 and 2004 c 242 s 53 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the public employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for plan 1 members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for plan 2 and plan 3 members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August

31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan 2.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.

(6) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(7) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(8)(a) "Compensation earnable" for plan 1 members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer.

(i) "Compensation earnable" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(ii) "Compensation earnable" does not include:

1 (A) Remuneration for unused sick leave authorized under RCW
2 41.04.340, 28A.400.210, or 28A.310.490;

3 (B) Remuneration for unused annual leave in excess of thirty days
4 as authorized by RCW 43.01.044 and 43.01.041.

5 (b) "Compensation earnable" for plan 2 and plan 3 members, means
6 salaries or wages earned by a member during a payroll period for
7 personal services, including overtime payments, and shall include wages
8 and salaries deferred under provisions established pursuant to sections
9 403(b), 414(h), and 457 of the United States Internal Revenue Code, but
10 shall exclude nonmoney maintenance compensation and lump sum or other
11 payments for deferred annual sick leave, unused accumulated vacation,
12 unused accumulated annual leave, or any form of severance pay.

13 "Compensation earnable" for plan 2 and plan 3 members also includes
14 the following actual or imputed payments, which are not paid for
15 personal services:

16 (i) Retroactive payments to an individual by an employer on
17 reinstatement of the employee in a position, or payments by an employer
18 to an individual in lieu of reinstatement in a position which are
19 awarded or granted as the equivalent of the salary or wage which the
20 individual would have earned during a payroll period shall be
21 considered compensation earnable to the extent provided above, and the
22 individual shall receive the equivalent service credit;

23 (ii) In any year in which a member serves in the legislature, the
24 member shall have the option of having such member's compensation
25 earnable be the greater of:

26 (A) The compensation earnable the member would have received had
27 such member not served in the legislature; or

28 (B) Such member's actual compensation earnable received for
29 nonlegislative public employment and legislative service combined. Any
30 additional contributions to the retirement system required because
31 compensation earnable under (b)(ii)(A) of this subsection is greater
32 than compensation earnable under (b)(ii)(B) of this subsection shall be
33 paid by the member for both member and employer contributions;

34 (iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045,
35 and 72.09.240;

36 (iv) Compensation that a member would have received but for a
37 disability occurring in the line of duty only as authorized by RCW
38 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9)(a) "Service" for plan 1 members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

(i) Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining

1 eligibility to retire under RCW 41.40.180 as authorized by RCW
2 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW
3 28A.400.300 is equal to two service credit months. Use of less than
4 forty-five days of sick leave is creditable as allowed under this
5 subsection as follows:

6 (A) Less than twenty-two days equals one-quarter service credit
7 month;

8 (B) Twenty-two days equals one service credit month;

9 (C) More than twenty-two days but less than forty-five days equals
10 one and one-quarter service credit month.

11 (b) "Service" for plan 2 and plan 3 members, means periods of
12 employment by a member in an eligible position or positions for one or
13 more employers for which compensation earnable is paid. Compensation
14 earnable earned for ninety or more hours in any calendar month shall
15 constitute one service credit month except as provided in RCW
16 41.40.088. Compensation earnable earned for at least seventy hours but
17 less than ninety hours in any calendar month shall constitute one-half
18 service credit month of service. Compensation earnable earned for less
19 than seventy hours in any calendar month shall constitute one-quarter
20 service credit month of service. Time spent in standby status, whether
21 compensated or not, is not service.

22 Any fraction of a year of service shall be taken into account in
23 the computation of such retirement allowance or benefits.

24 (i) Service in any state elective position shall be deemed to be
25 full time service, except that persons serving in state elective
26 positions who are members of the Washington school employees'
27 retirement system, teachers' retirement system, public safety
28 employees' retirement system, or law enforcement officers' and fire
29 fighters' retirement system at the time of election or appointment to
30 such position may elect to continue membership in the Washington school
31 employees' retirement system, teachers' retirement system, public
32 safety employees' retirement system, or law enforcement officers' and
33 fire fighters' retirement system.

34 (ii) A member shall receive a total of not more than twelve service
35 credit months of service for such calendar year. If an individual is
36 employed in an eligible position by one or more employers the
37 individual shall receive no more than one service credit month during

any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(14)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(15) "Regular interest" means such rate as the director may determine.

(16) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(17)(a) "Average final compensation" for plan 1 members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan 2 and plan 3 members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(19) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(21) "Retirement allowance" means the sum of the annuity and the pension.

(22) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(23) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(25) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor, or appointed by the chief justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which compensation is paid.

(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.

(27) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(28) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

(29) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(30) "Director" means the director of the department.

(31) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "Plan 1" means the public employees' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(34) "Plan 2" means the public employees' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and are not included in plan 3.

(35) "Plan 3" means the public employees' retirement system, plan 3 providing the benefits and funding provisions covering persons who:

(a) First become a member on or after:

(i) March 1, 2002, and are employed by a state agency or institute of higher education and who did not choose to enter plan 2; or

(ii) September 1, 2002, and are employed by other than a state agency or institute of higher education and who did not choose to enter plan 2; or

(b) Transferred to plan 3 under RCW 41.40.795.

(36) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(37) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(38) "Index B" means the index for the year prior to index A.

(39) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(40) "Adjustment ratio" means the value of index A divided by index B.

(41) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(42) "Separation from service" occurs when a person has terminated all employment with an employer. Separation from service or employment

does not occur, and if claimed by an employer or employee may be a violation of RCW 41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this subsection.

(43) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

Sec. 6. RCW 41.40.037 and 2003 c 412 s 5 and 2003 c 295 s 7 are each reenacted and amended to read as follows:

(1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2)(a) Except as provided in (b) of this subsection, a retiree from plan 1 who enters employment with an employer at least one calendar month after his or her accrual date may continue to receive pension payments while engaged in such service for up to eight hundred sixty-seven hours of service in a calendar year without a reduction of pension.

(b) A retiree from plan 1 who enters employment with an employer at least three calendar months after his or her accrual date and:

(i) Is hired pursuant to a written policy into a position for which the employer has documented a justifiable need to hire a retiree into the position;

(ii) Is hired through the established process for the position with the approval of: A school board for a school district; the chief executive officer of a state agency employer; the secretary of the senate for the senate; the chief clerk of the house of representatives

1 for the house of representatives; the secretary of the senate and the
 2 chief clerk of the house of representatives jointly for the joint
 3 legislative audit and review committee, the legislative transportation
 4 committee, the joint committee on pension policy, the legislative
 5 evaluation and accountability program, the legislative systems
 6 committee, and the statute law committee; or according to rules adopted
 7 for the rehiring of retired plan 1 members for a local government
 8 employer;

9 (iii) The employer retains records of the procedures followed and
 10 decisions made in hiring the retiree, and provides those records in the
 11 event of an audit; and

12 (iv) The employee has not already rendered a cumulative total of
 13 more than one thousand nine hundred hours of service while in receipt
 14 of pension payments beyond an annual threshold of eight hundred sixty-
 15 seven hours;

16 shall cease to receive pension payments while engaged in that service
 17 after the retiree has rendered service for more than one thousand five
 18 hundred hours in a calendar year. The ~~((one thousand nine hundred~~
 19 ~~hour))~~ cumulative total limitations under this subsection ~~((applies))~~
 20 apply prospectively ~~((to those retiring after July 27, 2003, and~~
 21 ~~retroactively to those who retired prior to July 27, 2003, and shall be~~
 22 ~~calculated from the date of retirement))~~ after the effective date of
 23 this act. Hours beyond the annual threshold of eight hundred sixty-
 24 seven that have already been accrued by reemployed retirees prior to
 25 the effective date of this act shall not count toward the one thousand
 26 nine hundred hour cumulative total.

27 (c) When a plan 1 member renders service beyond eight hundred
 28 sixty-seven hours, the department shall collect from the employer the
 29 applicable employer retirement contributions for the entire duration of
 30 the member's employment during that calendar year.

31 (d) A retiree from plan 2 or plan 3 who has satisfied the break in
 32 employment requirement of subsection (1) of this section may work up to
 33 eight hundred sixty-seven hours in a calendar year in an eligible
 34 position, as defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as
 35 a fire fighter or law enforcement officer, as defined in RCW 41.26.030,
 36 without suspension of his or her benefit.

37 (3) If the retiree opts to reestablish membership under RCW
 38 41.40.023(12), he or she terminates his or her retirement status and

becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five months in a calendar year without a reduction of his or her pension.

Sec. 7. RCW 41.40.037 and 2004 c 242 s 63 are each amended to read as follows:

(1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2)(a) Except as provided in (b) of this subsection, a retiree from plan 1 who enters employment with an employer at least one calendar month after his or her accrual date may continue to receive pension payments while engaged in such service for up to eight hundred sixty-seven hours of service in a calendar year without a reduction of pension.

(b) A retiree from plan 1 who enters employment with an employer at least three calendar months after his or her accrual date and:

(i) Is hired into a position for which the employer has documented a justifiable need to hire a retiree into the position;

(ii) Is hired through the established process for the position with the approval of: A school board for a school district; the chief executive officer of a state agency employer; the secretary of the senate for the senate; the chief clerk of the house of representatives for the house of representatives; the secretary of the senate and the chief clerk of the house of representatives jointly for the joint legislative audit and review committee, the legislative transportation committee, the joint committee on pension policy, the legislative evaluation and accountability program, the legislative systems committee, and the statute law committee; or according to rules adopted for the rehiring of retired plan 1 members for a local government employer;

(iii) The employer retains records of the procedures followed and decisions made in hiring the retiree, and provides those records in the event of an audit; and

(iv) The employee has not already rendered a cumulative total of more than ~~((one thousand nine hundred))~~ three thousand one hundred sixty-five hours of service while in receipt of pension payments beyond an annual threshold of eight hundred sixty-seven hours; shall cease to receive pension payments while engaged in that service after the retiree has rendered service for more than one thousand five hundred hours in a calendar year. The ~~((one thousand nine hundred hour))~~ cumulative total limitations under this subsection ~~((applies))~~ apply prospectively ~~((to those retiring after July 27, 2003, and retroactively to those who retired prior to July 27, 2003, and shall be calculated from the date of retirement))~~ after the effective date of this act. Hours beyond the annual threshold of eight hundred sixty-seven that have already been accrued by reemployed retirees prior to the effective date of this act shall not count toward the three thousand one hundred sixty-five hour cumulative total.

(c) When a plan 1 member renders service beyond eight hundred sixty-seven hours, the department shall collect from the employer the applicable employer retirement contributions for the entire duration of the member's employment during that calendar year.

(d) A retiree from plan 2 or plan 3 who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours in a calendar year in an eligible

position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a fire fighter or law enforcement officer, as defined in RCW 41.26.030, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.40.023(12), he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five months in a calendar year without a reduction of his or her pension.

NEW SECTION. **Sec. 8.** Sections 1 through 4 and 6 of this act take effect January 1, 2006.

NEW SECTION. **Sec. 9.** Sections 5 and 7 of this act take effect July 1, 2006.

NEW SECTION. **Sec. 10.** Sections 4 and 6 of this act expire July 1, 2006.

--- END ---

Appendix H

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6090

Chapter 518, Laws of 2005

(partial veto)

59th Legislature
2005 Regular Session

FISCAL MATTERS

EFFECTIVE DATE: 5/17/05 - Except section 923, which becomes effective 7/01/06; and section 931, which becomes effective 6/30/05.

Passed by the Senate April 24, 2005
YEAS 25 NAYS 22

BRAD OWEN

President of the Senate

Passed by the House April 24, 2005
YEAS 56 NAYS 42

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6090** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

Approved May 17, 2005, with the exception of Sections 101(1); 204(1)(a); 204(1)(p); 206(11); 209(21); 213(11); 307(9); 307(11); 307(14); 307(19); 717; 718; 721; 805, page 186, lines 21-23; 912; and 1106, page 294, lines 23-24, which are vetoed.

FILED

May 17, 2005 - 3:35 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

23 NEW SECTION. **Sec. 105. FOR THE OFFICE OF THE STATE ACTUARY**

24 Department of Retirement Systems Expense Account--

25 State Appropriation \$3,013,000

26 The appropriation in this section is subject to the following
27 conditions and limitations: By December 1, 2005, the state actuary
28 shall conduct an actuarial analysis that quantifies, to the greatest
29 extent permissible from available experience data, the fiscal impact of
30 the retire-rehire program for plan 1 of the public employees'
31 retirement system and the teachers' retirement system enacted by
32 chapter 10, Laws of 2001 and chapter 412, Laws of 2003. In addition to
33 the actuarial analysis, the state actuary shall present a range of
34 legislative alternatives to the plan 1 retire-rehire program, including
35 an actuarial analysis of the fiscal impact of proposals to increase the
36 maximum retirement allowance beyond sixty percent of average final
1 compensation. The analysis shall be submitted to the select committee
2 on pension policy, the senate committee on ways and means, and the
3 house of representatives committee on appropriations.

ESSB 6090.SL

p. 6